RIGHTS AND DUTIES OF ORDINARIES

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RIGHTS AND DUTIES OF

ORDINARIES

ACCORDING TO THE CODE AND APOSTOLIC FACULTIES

BY

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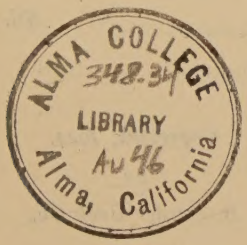
Author of "A Commentary on the New Code of Canon Law," "The Pastor According to the New Code," etc.



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To Commemorate the Foundation

of

Conception Abbey O. S. B.

Half a Century Ago

This Volume is Fraternally Dedicated

By The Author

1923

FOREWORD

In this volume are embodied most of the laws and rules which concern all those ecclesiastics who go by the name of "Ordinaries," according to can. 198. It is, therefore, intended to be of practical assistance especially to the governing prelates endowed with ordinary powers, namely, to residential bishops, to vicars either general or capitular (administrators), and to religious superiors of exempt clerical institutes. We also inserted the Faculties which were offered by Formulary III, issued March 17, 1922, and can be obtained, upon application, from the various SS. Congregations and the S. Poenitentiaria. But we omitted the Faculties granted by the S. C. de Propaganda Fide, because of the very limited use of the same in our country and Great Britain.

Rev. Fr. Joseph Putzer, of blessed memory, said in the Foreword to his most valuable *Commentarium in Facultates Apostolicas:* "Vix ullus in hac Republica invenietur Sacerdos, vel paululum sacro ministerio functus, qui non perspexerit, quanti intersit, *facultates* a S. Sede Ordinariis ad Dioecesium gubernationem concedi solitas penitus nosse." We believe that this saying still holds to some extent, although it cannot be denied that the Code has not only cleared up many a difficulty, but also widened the ordinary power of our Ordinaries, so that what formerly required a faculty, in the strict sense, may now be exercised in virtue of the powers granted by law. This observation should also be applied to the explanation of the

Faculties, because these must be understood and interpreted in the light of the Code.

We here wish to express our sincere gratitude to the *Most Rev. S. G. Messmer, D.D., Archbishop of Milwaukee,* who has always taken great interest in all our publications and has suggested the very thought of publishing this volume, which, we hope, will, with God's assistance, accomplish the purpose mentioned above.

Conception Abbey, Conception, Mo., Feb. 26, 1924

THE AUTHOR

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INTRODUCTION

1. *Terminology*

WHAT modern researches have brought to light concerning the various terms with which the office of bishops has been honored, may be briefly summed up in these statements.[1]

There is no dispute as to the existence of certain offices in the primitive Church. Holy Writ amply testifies to this fact. The very title *"Apostle"* presupposes a class of men distinguished from those to whom these messengers were sent. The Acts of the Apostles mention another body of men, who were employed in the more or less material administration of the first community at Jerusalem; to wit, the *diaconi,* or ministers simply so called. Between these two classes of functionaries, however, there are mentioned in the earliest sources others who go by the respective Greek names of ποιμένες, shepherds or pastors, ἐπίσκοποι, overseers, superintendents, or πρεσβύτεροι, seniors (priests). Were these three terms so well determined and understood by the Apostolic Church or first Christians that each of them signified a specifically

[1] Concerning the modern literature on this subject see Stanislaus v. Dunin-Borkowski, S. J., *Die neueren Forschungen über die Anfänge des Episkopates,* 77. Ergänzungsheft zu den *Stimmen aus Maria Laach,* 1900; H. Bruders, S. J., whose work we here use in the Italian translation by Prof. Ch. Villa, *La Costituzione della Chiesa,* Firenze, 1906; also D. Bouix, *Tractatus de Episcopo,* 1859, t. I, 4 ff.

distinct class of ecclesiastical officers? Before we answer this question we would recall that the Primitive Church was favored with many gratuitous gifts (*gratiae gratis datae*), which gradually decreased, or at least ceased to be what we might call common among the first believers. Of these gifts, (*charismata*), that of prophecy was the most important, and appears to have lasted longest (to about A. D. 200). Prophecy was intended for the instruction of others in the sublime truths of the Christian religion, for the edification and consolation of the converts. The "prophets" were not confined to a limited territory, but exercised their office or function wherever they chanced to be. This extraordinary gift gave them, besides, a certain pre-eminence even over the prelates who cared for the whole flock, wherein the Holy Ghost had placed them bishops to rule the Church of God (Acts XX, 28). Hence, it should cause little surprise that the superiors proper of local communities are not as conspicuous as we might expect, or that their office appeared less distinct and less distinguished than it really was, and later became, after the charismatic organizers and messengers ceased to exist. Furthermore, the fact that during the lifetime of the Apostles the latter had a hand in the development and administration of communities which they had founded, necessarily placed some restraint on the exercise of the full power of the resident or local prelates.

To return, then, to the question stated above, *viz.*, what was the distinction between *pastores, episcopi,* and *presbyteri,* the answer should be:

a) As to the ποιμένες, or shepherds, the parable which the Lord applied to himself (Joh. X, 11) signifies the relation between flock and pastor or leader; in other words, it expresses the pastoral duty of the one to whom

the sheep are entrusted. But as far as bishops are concerned, the term remained one of metaphorical or allegorical significance, and did not assume a technical character.

b) Different was the development of the other two words, *episcopi* and *presbyteri,* which gradually grew into the canonically well determined vocabulary. *Episcopus* means one who continually gives his attention to something entrusted to his care. Thus, in the second century B. C., employees of the municipality of Rhodes were styled *episkopoi,* and one employee with a sacred character was called *episkopos.* That the Christians who were mostly acquainted with Greek terminology made use of this word in its pagan meaning is beyond doubt. In this sense it occurs in 1 Pet. II, 25, where it stands for a Christian vested with an office that combines the attributes of shepherd and overseer. After the time of St. Ignatius of Antioch, bishops are the representatives of the invisible inspector or superintendent, they are the acknowledged leaders and magistrates, each one in his own residence or place, chiefly in political or commercial centers.[2]

c) More frequent was the use of the term *presbyteroi,* not only among the Jews, but also the Gentiles. Several municipalities of Asia Minor had corporations under the name of *"presbytikon."* In Egypt, there were fifty *presbyteri* who governed all the affairs of the sacerdotal caste. The Jews of the Western Diaspora, with their Hebrew-Greek literature and vocabulary, also had their *presbyteroi,* vested with civil and religious power. The New Testament mentions the well-known *synedrium* composed of "highpriests, scribes, and priests." The same

[2] See Ignat., *Epist. ad Magnes.,* III, 1, 2.

source uses the word *presbyteros* sometimes only for an aged person, as in Luke XV, 25; sometimes for seniors; sometimes for the *primitiæ* or first converts to the new religion, and applies it especially to those who were near or around our Lord and His Apostles. From this latter use the technical term arose and was applied to a particular office, distinct from the Jewish as well as pagan priesthood. This process, of course, required some time. At first not only bishops, but even Apostles, had been given the name *presbyteroi*.[3] After about the year 113, however, the specifically distinct term, in the sense in which it is now used, was undoubtedly formed and firmly settled among the Christians. After the Apostles were no more, there were in the Church bishops, priests, and deacons. Their office, indeed, is of divine origin, but the terminology was not fixed until after 113. Therefore it has truly been said that an unbiased student of the primitive sources will find that only in the letters of St. Ignatius of Antioch, or about the year 113, a well-defined gradation of *diaconoi, presbyteroi*, and *episcopoi* may be discovered.[4] It is certain, says Duchesne, that the priests or bishops who directed a local community, recognized the apostles, of whatever order, as possessed of superior authority, and as the founders and spiritual masters not only of an isolated Christian body, but either of all Christian bodies generally, or of those of particular regions. As these great leaders gradually passed away, a definite hierarchy made its appearance. In each town, all the Christians and their directors (*presbyteri, episcopi*) were ranged under a chief bishop, to whom this name of bishop was shortly after exclusively applied. Around him, and con-

[3] See Acts XI, 30; XV, 2, 4, 6, 22, 23; XVI, 4; XXI, 18.

[4] See v. Dunin-Borkowski, *l. c.*, page 2.

stituting with him a college, were his priest-counsellors; beneath them the deacons, who in their functions, already become varied and numerous, were not long after assisted by a whole staff of inferior ministers.[5]

This, however, must not be understood as if the episcopate were a mere human development. The terminology is one thing and the office itself is another, though perhaps not so clearly discernible or distinct from a similar function. We know from the Acts that bishops were appointed by the Apostles as presidents and superiors of the faithful or a portion thereof; that they were chosen by the coöperation of the flock, but sent and invested only by the Apostles, *i. e.*, by divine interposition or command; that this initiation into the sacred office consisted in the laying on of hands by the Apostles.[6] The Pastoral Letters of St. Paul outline the rights and duties of these superintendents. One of these consists precisely in providing things that were wanting and in ordaining *presbyteri* in every city (Tit. I, 5).

Besides the usual name *episcopus*, the Latin terminology has formed other words, and that from ancient times. Thus *sacerdos* occurs in the writings of the earliest authors. St. Gregory the Great calls John the Faster, Patriarch of Constantinople, his *consacerdos*, and addresses bishops of various dioceses as *sacerdotes* of such a diocese or church.[7] But towards the eleventh century this usage

[5] *Christian Worship*, translated by M. L. McClure, London, 1903, page 8.

[6] See Acts I, 20; XX, 28; 1 Tim. IV, 14; 2 Tim. I, 6; Tit. I, 5-14, etc.

[7] See *Gregorii I. Papae Registrum Epistolarum*, I, 154 and *passim* (*Monumenta Germaniae Historica*, Epp. T. II), ed. Ewald-Hartmann, 1899.

gradually disappears,[8] and other attributes become more prominent. Thus we have *iudex ordinarius,* which means not merely a judge, but one endowed with ordinary jurisdiction.[9] The Decretals of Gregory IX mention a *dioecesanus* without any further appellative. The explanation is indicated: their judiciary or coercive power was limited to their respective territory.[10]

Finally, there are two well-known Latin terms: *praesules* and *praelati.* The former is said to insinuate the right of presiding over synods.[11] Prelate, from *præferre,* alludes to their prominent position above the whole people by reason of their divine character and power.[12] But the term *"prelate"* is also applied to superiors of regulars by the same Decretals.[13]

The *Greek* terms, *antistes,* already known to the Decretals,[14] has become, we might say, a canonical term, although it was not frequent in ancient times. For the older Greek designations for bishops were προστάται, or superiors, προηγούμενοι, προκαθημένοι, or presidents. *Antistes* means a person of prominence, or, as Barbosa says,[15] one who opposes heresy, as a shepherd resists the wolf.

[8] See c. 1, C. 16, q. 7 (Greg. VII), where a neat distinction between *sacerdotes* and *episcopi* is apparent.

[9] Compare X, I, 31 *de officio iudicis ordinarii;* also c. 16, C. 16, q. 7 (c. 1, *Synodi Toletani* IX, A. D. 655): *denuntiare episcopo vel iudici;* also c. 7. 6°, I, 16.

[10] See c. 25. X, III, 38; c. 2, 6°, I, 2.

[11] See c. 11, X, I, 11; Barbosa, *De Officio et Potestate Episcopi,* Lugduni 1665, P. I, tit. 11, cap. 2, n. 5; v. Scherer, *Handbuch d. K.-R., Graz,* 1886, 1, 557.

[12] Barbosa, *i. e.: "Praelati cum praesint universo populo sibi commisso ratione divinorum et peccati."*

[13] See c. 7, X, I, 31.

[14] See c. 11, X, I, 11.

[15] *l. c.,* n. 6.

2. *Different Kinds of Bishops*

As there were non-resident prelates besides the resident prelates in the Apostolic age, so we learn from synodal acts of the third and fourth century of bishops who go by the name of "bishops of the neighboring country." Later on they were simply called *chorepiscopi*.[16] These, according to can. 14 of the synod of Neo-Cæsarea (314), were types of the seventy disciples. From the material at hand it is rather difficult to circumscribe the nature and extent of their power. However, can. 10 of the synod of Antioch (341) supposes that at least some of them had received episcopal consecration. The same canon permits them to ordain lectors, subdeacons, and exorcists, but not deacons or priests, and allows them to issue *litterae commendatitiae*.[17] The synod of Laodicea (between 343 and 381) forbade the existence of such bishops in villages and country places (can. 57). However, this enactment certainly did not take effect everywhere; for we hear of *chorepiscopi* in Africa in the fifth century,[18] and in the Frankish kingdom three centuries later, although in this last-named country their power appears to be entirely dependent on the good pleasure and need of the local Ordinary.[19] In the tenth century, owing chiefly to the influence of Pseudo-Isidore, the *chorepiscopi* commence to disappear and their office is merged with that of the archdeacons, although their name still remains un-

[16] Syn. Ant.; see Hardouin, *C. C.*, I, 197; Ancyr., can. 13; see Hefele, *Concilien-Gesch.*, I, 199 f.

[17] Hefele, *l. c.*, I, 218, 496 f.; see c. 5, Dist. 80.

[18] Id., *l. c.*, I, 748.

[19] Rhabanus Maurus, *Tract. de Chorepiscopis*, Migne, *P. L.*, 107, 1195–1206.

til the twelfth century, and is mentioned in Ireland even in the century following.[20]

However, the place of the former *chorepiscopi* was frequently taken by the *titular* or auxiliary bishops, who first appear in Spain, in the tenth century, and then elsewhere. At the time of the Saracen invasions many bishops who had been expelled from their sees sought refuge in the dioceses of their colleagues who had been more fortunate than themselves. These refugees then lent a helping hand to their kind hosts. After the demise of these coadjutors, successors were appointed, in the hope that the respective dioceses would soon be rescued from the power of the infidels.[21] But it was only towards the end of the crusader period that such appointments became regular, the experience with the *chorepiscopi* being still fresh in memory. For the latter, against the letter and spirit of the law which permitted only one bishop in each diocese, had gradually usurped a power that would vie with that of the Ordinary. Yet, in spite of the fact that these bishops-coadjutors sometimes turned into wandering prelates,[22] their usefulness as coöperators rendered the institution permanent. Thus they were, by some *fictio iuris,* ordained and assigned to a see occupied by the Moslems, or *in partibus infidelium,* and their appointment and consecration, like that of other bishops, was reserved to the Holy See. Pope Leo XIII removed the former qualification entirely, so that they are now simply called *episcopi titulares* or non-residential bishops.[23]

[20] See v. Scherer, *Handbuch des Kirchenrechts,* 1886, Vol. I, 597 f.

[21] Funk, *Manual of Church History,* 1913, I, 364.

[22] See c. 5, Clem. I, 3; v. Scherer, *l. c.,* I, 555.

[23] *Litt. encycl.,* March 3, 1882 (*Coll. Prop. Fide,* 1907, Vol. II, page 157, n. 1565).

Another kind of bishops are the *coadjutors,* or vicars, or dispensators, given either permanently or temporarily to disabled bishops. Thus Narcissus of Jerusalem, when 116 years old, received Alexander as his successor.[24] St. Augustine was associated with Valerius of Hippo, although the latter was still *incolumis,*[25] but suffering from a defect of speech. The appointment of such bishops-coadjutors was, in earlier centuries, made by synods or by the Pope,[26] to whom this right was reserved by Boniface VIII.[27]

In the Irish Penitential Books, and in documents of monastic bodies, we read of so-called *monastery-bishops,* who were also known in French and German abbeys. Their power was rather limited and depended, as to jurisdiction, on the good pleasure of the governing abbot. They were, however, allowed to ordain members of their respective monasteries, to bless the chrism, and, in case of danger or in the absence of the Ordinary, to administer Confirmation.[28]

From these must be distinguished the *abbates* or *prælati nullius.* They belong to the class of so-called *prælati secundarii,* because they are said to possess jurisdiction, not by virtue of their office, but by delegation. Their power is closely connected with exemption, out of which their jurisdiction in the external forum really grew. They are mentioned in the Decretals. But it must be noted that exemption in their case really means territorial separation, namely, separation from the diocesan organization, so that they rule over land and people to the ex-

[24] Euseb., *Hist. Eccl.,* IV, 11.
[25] See c. 12, C. 7, q. 1.
[26] See c. 3, C. 8, q. 1.
[27] See c. un., 6°, III, 5.
[28] See v. Scherer, *l. c.,* I, 554.

clusion of the local Ordinary, who otherwise would be entitled to govern that strip of land or territory and the subjects living therein. Therefore, they are styled prelates *nullius,* because they belong to no diocese. Abbots of religious communities—more accurately, of monastic bodies who have a separate territory under them—are called *abbates nullius,* while the provosts of secular chapters or even provosts of canons regular who rule over a separate territory, are called *prælati nullius.*[29] These, as a rule, do not receive episcopal consecration, but only a blessing.

3. *Election or Appointments of Bishops*

The act by which one was chosen to an ecclesiastical office was called χειροτονία, a term which was later reserved to signify the technical act of consecration or laying on of hands with prayer. Originally, however, χειροτόνειν might have indicated the act of voting or choosing.[30] The Apostles and brethren elected Matthias by casting lots;[31] but later on the same Apostles simply appointed one of their own choice and told the disciples to do the same.[32] Some decades later, according to the testimony of Clement of Rome, the successors of the Apostles, the so-called *viri eximii,* constituted bishops with the consent of the entire assembly or church (*"consen-*

[29] See *Kirchenlexicon,* 2nd ed., s. v. Prälatur," Vol. X, 263 ff.—The older *Ordines Romani,* too, applied the term *prælatus* to bishops and abbots; cfr. Phillips, *Kirchenrecht,* 1864, Vol. VI, 305 f.

[30] Bruders-Villa, *l. c.,* pp. 12 ff.

[31] Acts I, 15 ff.

[32] Tit. I, 5.

tiente universa ecclesia").[33] The Greek term for consent certainly involves active coöperation; it is the *complacuit* or *placuit* of Acts XV, 25, and of later synodal acts. Whether it only meant giving testimony to the fitness of the candidate, is not clearly expressed. After the seniors of the Church, *i. e.,* the Apostles and their immediate disciples, had passed away, it was quite natural that the authority to appoint bishops or residential prelates should undergo some slight change. In other words, the bishops already in existence and, to some extent, connected with the vacant sees, took the place of the Apostles and the *viri eximii*.[34] We find the mode of electing bishops pretty well described in the well-known letter (67) of St. Cyprian, although even this text leaves room for doubt. The salient passage reads in English: "For which reason you must diligently observe and keep the practice delivered from divine tradition and Apostolic observance, which is also maintained among us, and almost throughout all the provinces; that for the proper celebration of ordinations all the neighboring bishops of the same province should assemble with the people for whom a prelate is ordained. And the bishop should be chosen in the presence of the people, who have most fully known the life of each one and have looked into the doings of each one as regards his habitual conduct. And this also, we see, was done by you in the ordination of our colleague Sabinus; so that, by the suffrage of the whole brotherhood, and by the sentence of the bishops who had assembled in their presence, and who had written letters to you concerning him, the episcopate was conferred upon him, and hands were imposed on him in the

[33] *Ep. I ad Corinth.,* cap. 44, n. 3 (Funk, *Opp. Patr. Apost.,* 1887, page 117).

[34] See Hefele, *Concilien-Geschichte,* I, 366.

place of Basilides."[35] It follows from this, as Hefele points out, that the neighboring bishops of a province assembled to elect a bishop to a vacant see; that the election was performed in the presence of the whole diocesan flock; that the episcopate was delivered *suffragio*[36] *universæ fraternitatis,* which certainly involves a vote proposing or naming a candidate, and *episcoporum iudicio,* which may reasonably be taken to mean that the final judgment rested with the bishops.[37] However, the peoples' share in the election of their prelates was gradually curtailed and finally forbidden. Thus the first council of Nicæa (325), can. 4, mentions only the bishops of the *eparchia* (province) as allowed to set up (*καθίστασθαι*) a bishop. The synod of Laodicea, can. 12 f., ruled that the election of a bishop should be performed by the bishops of the province, and that the people should have no right in the election of those destined to the priesthood.[38]

The Greek Church had every reason to exclude secular intervention in the choice of bishops, Cæsaropapism running high at that time. Therefore the second Council of Nicæa (787), and, more emphatically still, the eighth General Council at Constantinople (869–870), forbade the participation of lay princes and potentates in the election of patriarchs, metropolitans, and bishops.[39]

[35] See *The Ante-Nicene Fathers,* by Roberts and Donaldson, 1899, Vol. V, 371.

[36] *Suffragium* is derived from *sub* and *frango,* a broken piece, shard, or potsherd, with which the ancients used to vote in their assemblies.

[37] Hefele, *Concilien-Geschichte,* I, 367.

[38] Hefele, *l. c.,* I, 365, 733; see also *Const. Apost.,* VIII, cap. 4; c. 6, Dist. 63; Loening, *Geschichte des deutschen Kirchenrechts,* 1878, I, 108 f.; Phillips-Vering, *Kirchenrecht,* 1889, Vol. VIII, P. I, *passim.*

[39] Can. 22 of the VIIIth Council in cc. 1 and 2, Dist. 63.

The *Western Church*, which interpreted these canons as concerning consecration only, followed the old custom, which allowed the clergy and the people to designate a candidate with the consent of the metropolitan.[1] The mode of proceeding was rather democratic, somewhat like that of a Swiss Land-gemeinde or assembly of the whole diocese. The inhabitants not only of the episcopal city, but of the diocese, the neighbors, the members, the country and townships are sometimes represented, in the acts of the bishops as concurring in the election of their bishop. If there were several persons who proposed candidates, they deliberated, sometimes quite warmly, until one of the candidates had obtained the majority.[2]

The "Most Christian Kings" of the Merovingian dynasty, however, soon perceived that a bishop, on account of his dignity, rank, and wealth, could be made a powerful aid in shaping the destinies of the realm. Therefore they claimed the right of ratifying episcopal elections; nay, it has been said with a great deal of truth that no one could become a bishop without the royal consent.[3] On the other hand, powerful councils endeavored to curb such unwarranted interference. Thus can. 2 of the synod of Paris (557) enacted: "No city may have a bishop imposed on it, unless he has been freely elected by the clergy and the people; he may not be appointed by any king's command or otherwise against the will of the townspeople and of the bishops of the province; if any one dares to impose himself into the episcopal office by means of a royal demand or precept, he may not be received

[1] Synod of Chalcedon 451, can. 2; 3rd Synod of Orleans 538, can. 3 (Hefele, C.-G., II, 739, 753.)

[2] See Gregory of Tours, Hist. Franc., lib. 6 (Loening, l. c., II, 175).

[3] Loening, l. c., II, 175.

by the bishops of the province.[43] The will of the bishops, especially of the metropolitans, was rather supple and subservient, and as a result the Frankish kings were for the most part regular "bishop-makers." Evil consequently followed, one of which was an extensive and abject simony, so bitterly complained of by St. Gregory the Great in his letters to Brunhildis.[44] Another of the evils attendant upon royal "nomination," mildly styled ratification, was that unworthy subjects and not rarely even laymen without the canonically required preparations were promoted to most responsible positions. Another sad consequence of this cæsaropapistic system was that the Church of France, practically severed from the center, could or would not energetically counteract the absolutistic tendencies of the Frankish kings.[45] It sounds very improbable *a priori* that Charlemagne should have received from Adrian I (722–795) the privilege of investing or nominating all the metropolitans and bishops of his realm, even if two genuine letters of the same Pope would rather not assert the independence of episcopal election.[46]

In *Spain,* at first, the common law which permitted the election of bishops by clergy and people with the consent or ratification of the metropolitan was in vogue. The Arian kings did not molest Catholic elections. Even after the conversion of the Visigothic nation this mode of electing bishops remained. However, at the XIIth Synod of Toledo, we hear of a *"conniventia principum,"* and even

[43] See c. 5, Dist. 63.

[44] See *Registrum Epp. Gregorii I,* ed. Ewald-Hartmann, Ep. VIII, 4; XI, 49; Vol. II, 5, 321; Ep. ad Theodericum, XI, 47, Vol. II, 319.

[45] Thus Loening, *l. c.,* II, 185 f.

[46] Hefele, *l. c.,* III, 579.

of the royal election of all bishops. The XIIIth Synod of Toledo (683) confirmed the enactment of the preceding one, granting the kings of Spain almost the same power as that exercised by the Frankish rulers. However, the method of ratifying or nominating was not always uniform. On the contrary, the cathedral chapters gained great influence. To this should be added the right of the monks to intervene at these elections, a right which was formally acknowledged in the XIIth century.[47] The papal reservations in regard to certain bishoprics were not greatly in favor with the Spanish kings. On the contrary, the right of nomination, which was somewhat later styled *iuspatronatus,* was fully exercised in the Spanish domains, which Pope Adrian VI formally granted to his former pupil, Charles V, in 1523. Benedict XIV acknowledged the right of nomination in the Concordat of Jan. 11, 1753, and thus it practically remains up to our time.[48]

In *England* a more perfect form of episcopal election was introduced by Theodore of Canterbury. Under him and his immediate successors the appointment of bishops was generally made in the national synods, at which the primate presided, and which the deputies of the vacant church attended to give their consent. But England, too, followed the example of the rulers across the channel. "In effect," says Lingard, "that system was rapidly growing up in England which began to prevail on the continent." [49] Neither were evils absent from the practice that prevailed in this country.

[47] Phillips-Vering, *K.-R.,* 1889, Vol. VIII, P. I, page 192.—At a synod of Pampelona, in 1023, it was ruled that only monks should be elevated to bishoprics; *ib.* page 189.

[48] Phillips-Vering, *l. c.,* Vol. VIII, 200 ff.

[49] *History and Antiquities of the Anglo-Saxon Church,* 2nd ed.,

We only need to recall the name *investiture quarrel* in order to realize to what an abyss royal ratification or nomination was leading. Of course, it would be unfair to blame the secular power entirely for such unfortunate conditions; the prelates themselves shared in the responsibility. For, as the treaty of Sutri (1111) and the subsequent remonstrances on the part of the bishops plainly show, the interpenetration of things spiritual and temporal cleft fast and thick to the bones of these ecclesiastico-temporal lords. This was precisely the reason why the civil rulers, with some semblance of right, claimed a share in the appointment of bishops and abbots, who had become not only "superintendents" in things pertaining to God, but feudal lords, endowed with royal estates or allodial domains, which pointed to secular dependence and seemed to demand a visible sign of allegiance, fealty, or at least homage—*ligium et hominium,* as they were called in medieval Latin. This practical sign was found in handing to the nominee at first only the crozier or *baculus* (crook), and later, since the time of Emperor Henry III (1039–1056), also the ring—the symbols of jurisdiction and union. This mode of investing naturally created a false impression,—as if the episcopal power were conferred by the temporal ruler. Hence the acute tension between *sacerdotium* and *imperium* until the struggle was, at least to some extent, settled by the *Pactum Calixtinum,* or Concordat of Worms, in 1122, by which the ancient canonical procedure that allowed clergy and people to

I, 84. In Vol II, 22, he says: "A shadow of the ancient discipline was preserved: from the pulpit of the cathedral the name of the clergyman who had been nominated to the vacant see was announced to the congregation; and their acclamation of 'Many years may he live' was assumed as sufficient evidence of their assent."

elect a candidate in the presence of the emperor or his delegates, was restored.[50] Yet even so, the freedom of election was often flagrantly violated by the higher and lower nobility. Besides, the cathedral chapters, being mostly composed of men of noble extraction, succeeded in eliminating the rest of the diocesan, country and city clergy from the election. Thus the canons of the cathedral were finally acknowledged by canon law as the legitimate electors, to the exclusion of other clergymen and laymen. The popes, on their part, curtailed the acquired right and influence of the metropolitans as to confirmation or ratification or examination of the candidates, and reserved it to themselves. The bishops-elect had, therefore, to ask for confirmation from Rome, either in person or by proxy. The reason for this reservation is stated in a decretal of Gregory X which was enacted as a universal law at the IInd Council of Lyons (1274): blind avarice and wicked, damnable ambition (*avaritæ cæcitas et damnandæ ambitionis improbitas.*)[51]

Notwithstanding this formal acknowledgment of the elective right of the cathedral chapters—which after all was the best and most practical method—the popes, partly by reservations, partly by indults, caused this right either to become dormant or ineffective. Thus it came to pass that royal powers, based on such papal grants, either real or fanciful, assumed the right of nomination to some bishoprics, as in France and Austria, or the right of presentation to all vacant sees, as in Spain, Sicily, and Portugal. In some countries, however, like Switzerland and those provinces of Germany which were under Protestant rulers, the cathedral chapters continued to

[50] See c. 35, Dist. 63.

[51] See cc. 42, 56, X, I, 6; cc. 5, 6, 6°, I, 6.

exercise their right more or less freely, although even these elective bodies had to suffer from undue interference. Thus some governments in these countries claimed the right either of proposing a list of candidates from among whom the canons might elect, or of striking from the proposed list *personae non gratae*.[52] Thus it remained to the time of the World War. Whether the authorities concerned will now grant freedom in this most important business remains to be seen. Some men are slow to learn.

Generally speaking, the countries placed under the *jurisdiction of the Propaganda* enjoyed more liberty in the matter of electing prelates, *i. e.,* Rome there had full sway in appointing candidates to vacant sees. Some traces of the old method of electing by cathedral chapters are left in what is called *recommendation,* which, however, was not granted to all countries in exactly the same terms. The main features of this mode consist in selecting three candidates *(dignissimus, dignior, dignus)* and sending their names, either revised or not revised by the bishops of the province, to Rome. But in some minor points the system differed in various countries. Thus in *Ireland,* since 1829, parish priests are allowed to vote for three candidates, while the bishops may only pass judgment on the names thus proposed. In *England,* after 1852, the canons of the chapters alone were permitted to vote; but after 1874, the bishops were allowed to add names of their own choice, both lists being then forwarded to the Propaganda. *Scotland* has the same mode in dioceses where there is a chapter; where the diocese has no chapter, the recommendation is made by the bishops, including the archbishop of Glasgow.[53] In the

[52] See *Kirchenlexicon,* ed. II, Vol. XII, 1148 f.

[53] See Taunton, *The Law of the Church,* 1906, page 86 ff.

United States, by the decrees of Jan. 21, 1865, and Sept. 21, 1885, the diocesan consultors and irremovable rectors met under the presidency of the metropolitan or his senior suffragan and chose three candidates as *dignus, dignior, dignissimus,* respectively. The archbishop and his suffragans had the same right; and both lists were then forwarded to the Propaganda and, later on, to the S. C. of the Consistory, with whom lay the final choice.[54] Since July 25, 1916, a new method has been adopted *ad experimenti instar;*[55] whether it will prove satisfactory is hard to say. It is also difficult to describe this mode by a proper term, but we may call it a *proposal* for future appointments. The decree may be summarized as follows:

(1) The so-called *candidates,* whose names may be proposed, must enjoy certain *qualities.* They should be of mature age, but not too old, experienced in the practical administration of temporal and spiritual affairs, of sound Catholic doctrine,—which means that they must not be suspected of Modernism—of more than ordinary learning, faithfully devoted to the Holy See, of good conduct and piety, of sound manners and health. Their family affairs should also be examined (art. 2).

(2) All *bishops* are called upon to send to their metropolitan the names of one or two priests, either of their own diocese or outside of it, whom they regard as possible candidates for a future choice. This should be done in Lent, every two years, beginning with 1917 (art. 1). In order that the bishops may be properly informed as to the character of the candidates, they should informally and secretly ask their consultors and irremovable rectors—a reminiscence of the old method. They are, how-

[54] See *Conc. Baltim. III,* tit. II, n. 15.
[55] See *Acta Apost. Sedis,* Vol. VIII, 400 ff.

ever, in no wise bound to accept or follow the information thus obtained (art. 2 ff.). The metropolitan follows the same procedure in his archdiocese, and ultimately draws up an alphabetical list of the names received from all the bishops of the province (art. 5).

(3) The bishops *meet with their metropolitan* after Easter, at a convenient place and time, without attracting the attention of outsiders. To their meeting no other ecclesiastic is admitted. One of the bishops (the youngest or the ablest) acts as secretary. After having taken the oath of secrecy, the bishops enter into a moderate (moderate, we suppose, as to time and spirit) discussion concerning the candidates proposed. Then they proceed to ballot, in alphabetical order, the white ballot signifying "yes," the black one "no," and a neutral color, "I abstain" (art. 12). The metropolitan and the secretary act as tellers. More than one vote may be taken. After a result has been obtained, the minutes of the discussion and the result of the balloting are drawn up in the form of a document by the secretary, who reads the same to his fellow-prelates and has a copy made, which must be sent to the Apostolic Delegate, by whom it is forwarded to the Consistorial Congregation (art. 15).

This, in substance, is the decree regulating the "proposal" of names, which are to be kept on record in Rome as well as in the secret archives of the metropolitan, at least as long as there is no danger of divulgation. It is evident that the last shred of the elective rights which were formerly exercised by the chapters, as representatives of the clergy and the people, has thus been destroyed.

It is to be added that neither a recommendation nor, much less, a proposal, creates the *ius ad rem* which was and is inherent in elective bodies.

The late war seems to have paved the way to further unification in the appointment of bishops. Thus the mode prescribed by Rome for the U. S. has, within the last six years, been extended, although with some modifications, to the following countries:

1. *Canada and Newfoundland,* by decree of the S. C. Consist. of March 19, 1918.[56]

2. *Scotland,* by decree of the S. C. Consist. of Nov. 20, 1920. The bishops assemble every three years to draw up a list of names; they should also ask canons and experienced priests as to suitable candidates.[57]

3. *Brazil,* by decree of March 19, 1921, according to which the bishops meet every three or five years to draw up a list; if necessary or convenient, the bishops of two provinces may assemble together; the prelates *nullius* are also to take part in this procedure.[58]

4. *Mexico,* by decree of April 30, 1921, which lays down the same rules as for Brazil; the Vicars Apostolic also take part in these meetings.[59]

5. *Poland,* by decree of Aug. 29, 1921, which allows the bishops to meet every three years.[60]

The method thus applied to the aforesaid countries seems to be taken, at least *in nucleo,* from a decree issued by the S. C. of the Propaganda, May 1, 1887, for *Australia,* which prescribed that every three years the bishops should send secretly to their metropolitan and to the S. Congregation the names of priests whom they deemed worthy of the episcopal dignity.[61]

[56] *A. Ap. S.,* XI, 124 ff.
[57] *Ib.,* XIII, 13 ff.
[58] *Ib.,* XIII, *222* ff.
[59] *Ib.,* XIII, 379 ff.
[60] *Ib.,* XIII, 430 ff.
[61] See Taunton, *l. c.,* p. 94.

4. *Consecration of Bishops*

Before the bishops elect were consecrated, or at least at the time of consecration, they had to take an oath of obedience to their metropolitan. This oath contained the promise of observing the sacred canons and of remaining in union with the Apostolic See. Whether St. Boniface, the Apostle of Germany, was the first who imposed this oath on his suffragans,[62] after he himself had made this promise to the Pope in person, seems doubtful, because formulae in the *Liber Diurnus* appear to point to a remoter age. Be that as it may, the fact is that this oath, or *iuramentum fidelitatis,* was generally demanded of bishops after the investiture quarrel.[63] The formula, now simply transferred to the Pope, is given in the Decretals of Gregory IX, where we also learn that ratification and, more especially, consecration were reserved to the Holy See.[64] In a somewhat enlarged form the text of the oath was embodied by Clement VIII in the *Caeremoniale Episcoporum,* in 1598.

The date or *time* for consecration—unless the texts bearing on that subject are taken to mean election—was not always the same. Sometimes as much as a year was allowed to elapse after the demise of the predecessor. This seemed inconvenient, and the Council of Chalcedon (451) therefore ruled that, unless inexorable necessity demanded a postponement, the *ordinatio episcopi* should take place within three months from the death of the former bishop (can. 25). A fast of three days, which

[62] Thus Thomassinus, *Vetus et Nova Ecclesiae Disciplina,* P. II, lib. II, cap. 44, n. 9 (ed. Magunt., 1787, Vol. V, p. 297).

[63] *Ib.,* cap. 46, n. 3 (*ed. cit.,* V. 311 f.)

[64] See c. 4, X, II, 24.

the candidate generally spent in a monastery, preceded the act of consecration.[65]

For the installation or consecration of bishops it was considered indispensable that it should be entrusted to a more exalted authority than an individual bishop. This authority could be none other than the superior jurisdiction of the Church, that is, the collective hierarchy. As it was impossible to bring together all the members of the hierarchy at each ordination, it was arranged that they should be represented by a group of neighboring bishops, or, in certain places, by the metropolitan. Hence the obligation of having three bishops for a consecration to the episcopate, an obligation universally accepted from the beginning of the fourth century, unless the Pope himself was the consecrator. Besides this intervention of at least three bishops, episcopal ordination was characterized, with the same universality, by the ceremony of the open book of the Gospels being placed on the head of the candidate. This rite, which was observed as early as the fourth century, cannot have been altogether primitive, but it is certainly very ancient.[66]

The bishops consecrated by the *Pope* were almost always those of his own metropolitan province. They were not chosen by him, but elected in their several localities. The election being over, an official report or decree was drawn up, which was signed by the notables of the place, both clerical and lay, and the future bishop, accompanied by some representatives of his Church, thereupon set out for Rome, where the election was verified and the candidate examined. If the election was found to have been regular, and the Pope approved of the

[65] See Martène, *De Antiquis Ecclesiae Ritibus,* ed. Antwerp., 1763, II, 25 ff.

[66] See Duchesne-McClure, *Christian Worship,* 1903, pp. 377 f.

choice of the electors, the consecration followed. There was no special time of the year assigned for this ceremonial, but it had always to take place on a Sunday.

A special formulary was followed, but the Pope alone officiated at this ceremony, although he was often surrounded by bishops.[67]

In countries which followed the Gallican usage the consecration of a bishop was usually effected in the Church over which he was called to preside. The metropolitan and bishops of the province, after the election, as stated above concerning the Frankish Church, conducted the ordination. The president of the assembled bishops presented the elect to the clergy and people. This presentation was accompanied by an address. When the people had pronounced the *"Dignus est,"* the consecrating bishop called upon the congregation to pray, whereupon followed the consecrating prayer and the anointing of the hands, also accompanied by a prayer.[68]

5. *Encomium and Virtues of the Episcopate*

Ratherius, formerly bishop of Verona, later of Liège, the diocese in which he was born, had been imprisoned by King Hugh of Italy, at Pavia. There he composed, about 936, his famous *Praeloquia.* Book III, tit. VI, n. 12, reads like a compendium of all the attributes and epithets which, before his time, were written on the episcopal office and may, therefore, find a place here as a summary of the eulogies with which early ecclesiastical

[67] *Ib.,* pp. 359 f.

[68] *Ib.,* pp. 372 ff.; the *Pontificale Egberti Eboracensis Archiepiscopi,* of the IXth century, contains the anointing of hands and the specific prayer for this act; see Martène, *l. c.,* pp. 31 f.

writers honored the episcopate. He addresses the King thus: "Boldly let me tell you what the bishops are, and if I say boldly, it is because I have taken it from divine authority: gods they are, lords they are, Christs they are, heavens, angels, patriarchs, prophets, apostles, evangelists, martyrs they are; they are anointed, are kings, princes and judges, not only of men, but of angels as well; rams of the Lord's flock they are and pastors of sheep that have been washed in the blood of Christ; they are teachers and heralds of the coming Judge; they are watchmen and the apple of the eye of the Lord, friends of the living God and His sons; fathers they are, the lights of the world and the stars of heaven, pillars of the church and physicians of souls; as doorkeepers of paradise and holders of the keys of heaven they are able to open and close heaven, they are the clouds upon which the Lord has prepared his ascent, and the foundation upon which rests the whole structure of the temple of God." [69]

This encomium was indeed, bestowed upon the dignity as such, but it may justly be attributed to all those bishops who realize that the name "bishop" is a burden, and not merely an honor. To assume such a burden requires strong minds, great souls imbued with virtues that are not based upon merely natural motives, but surpass in splendor and efficacy those practised by the faithful. Of these virtues it is not necessary to make mention in particular. St. Gregory the Great, in his letters as well as in his work on the Pastoral Office, has many beautiful sayings about them. He recommends above all charity and humility, fortitude and vigilance. Of St. Desiderius, Bishop of Cahors, it was said that "he was a staff to the blind, food to the hungry, drink to the thirsty, salvation to the wretched and consolation to the desolate."

[69] Migne, *P. L.*, 136, 277.

Truly, therefore, was it said by the Council of Trent that the office of bishop was fearful even to the shoulders of angels.[70]

It appears proper to point out the nature and qualities of bishops before detailing their rights and obligations, or, in other words, first to consider the person, and then the inherent as well as accidental attributes of his office. Thus in metaphysics, too, the substance and subsistence are laid out, after which the *propria* and *accidentia* are set forth. After this preliminary tract on the person of the bishop, the episcopal rights and obligations of bishops and all those who enjoy episcopal or quasi-episcopal jurisdiction shall be explained in the order of the Code. Only it should be noted that the terms we give to each of the diverse powers are to be taken as comprehensive, though not always adequately distinguished, denominations of the several rights. Thus, to legislative power may be added the administrative power, which is really dispersed throughout the three first books of the Code. The judiciary power of bishops is more or less limited to the fourth book of the Code, and the coercive power is, also more or less, confined to the fifth book. To have some guiding principle, however, we retain the division of the triple power, and premise as Part I, the tract on the person and qualities of bishops. Hence the whole treatise shall comprise:

Part I. The Dignity and Qualities of Bishops.

Part II. Episcopal Duties and Privileges.

Part III. The Legislative and Administrative Power of Bishops.

Part IV. The Judiciary Power of Bishops.

Part V. The Coercive Power of Bishops.

[70] Sess. 6, c. 1 *De Ref.;* see Phillips, *Kirchenrecht,* 1869, Vol. VII, P. I, pp. 15 ff.

PART I

THE DIGNITY AND QUALITIES OF BISHOPS

The Code says (can. 329): *"The Bishops are the successors of the Apostles and, by divine institution, are placed over individual churches, which they rule with ordinary power under the authority of the Roman Pontiff."*

1. Concerning the term *bishop,* we refer to the introductory chapter. The bishops are the *successors of the Apostles.* This is their historical connection with those whom Christ endowed with jurisdiction to rule the Church of God.[1] However, there is a notable distinction between the Apostles and their successors. For the Apostles had received power over the whole church, or all communities of the universe, although they, too, at least implicitly, exercised their power only in union with, and subject to, the superior power of St. Peter. In other words, the power of the Apostles was not locally circumscribed or limited. The consequence is that the bishops, as a body, *i. e.,* as *collegium episcoporum,* succeed the body of the Apostles, the *collegium apostolorum.* For, if we except some ancient sees, like those of Jerusalem, Patras, etc., the sees of the other Apostles are not even historically certain. It would lead to an absurdity to say that individual bishops succeed individual Apostles. There is also another, dogmatical rather than juridical

[1] Acts XX, 28.

reason for distinguishing the bishops from the Apostles. The latter, as is commonly maintained, enjoyed certain personal gifts, the principal one of which was infallibility. This gift, indeed, must be vindicated to the body of the bishops (*e. g.,* when assembled in general council), but not to any individual bishop.[2]

2. The Code says that bishops are *placed over individual churches by divine institution.* This is but the logical consequence of the previous clause. For if the bishops are the successors of the Apostles, whom the Lord Jesus Christ chose and made his heralds, it follows that the episcopate is of divine institution, and its origin, therefore, is divine. But how are they placed by divine institution over single churches? Is there, or was there, any direct commission given by Christ to this effect? The Lord said: "Going therefore, *teach* ye all nations: *baptizing* them in the name . . . , teaching them to *observe* all things whatsoever I have commanded you" (Math. XXVIII, 19 f.). This threefold power of teaching, sanctifying, and commanding was thus conveyed to all the Apostles and all their successors, *viz.,* the Catholic episcopate as a body. But the Apostles, by choosing or appointing a residential prelate or bishop in an individual place, limited this power to a certain people or territory, as St. Paul did with regard to Titus (Tit. 1, 5). This order must doubtless refer to divine institution, not merely to divine providence. It was, then, by divine command, that a division of the field of labor, or territorially circumscribed jurisdiction, was introduced. "The episcopate is one, part of which is held by each one of the bishops for the whole," is a well known phrase of St.

[2] Bouix, *l. c.,* I, 47 ff.; Phillips, K.-R., 1845, Vol. I, 175 ff.; see S. Cyp., Ep. 68, n. 4 (*Antenicene Fathers,* 1899, Vol. V, p. 373).

Cyprian,[3] which expresses both the general power which bishops all have by virtue of the episcopate, and the individual power of single bishops in their respective sphere. The early writers abhor nothing more than interference by one bishop with the rights of another.

3. This *power is ordinary,* but subject to the authority of the Roman Pontiff. It is called and *is* ordinary, because it flows from the episcopate, or from the episcopal office, which has been formerly, *i. e.,* as such and in its essential features, instituted by Jesus Christ.

However, by reason of the primacy, it is quite intelligible and necessary that the power of the bishops should be subject to him who succeeds exclusively and fully to the primacy of the entire Church, *viz.,* the Roman Pontiff. Unity and harmony, especially among the *sacerdotes* (bishops), require that there should be one center. Although all the Apostles were equally chosen by Our Lord, yet one was preferred, thus indicating the dependence of the bishops upon the one Sovereign Pontiff.[4]

This subjection to the authority of the Roman Pontiff is expressed by the ratification or confirmation of the bishop-elect, as well as by the consecration, which is reserved to the Apostolic See. For although, as stated in the introductory chapter, it would not be historically correct to say that the Roman Pontiff always supervised the election and consecration of all the bishops, yet it is certain that this right is inherent in the primacy.[5] Conse-

[3] *De Unitate Eccl.,* n. 5 (*Antenicene Fathers,* Vol. V, 423); the footnotes of the editor and his explanations, however, are at times amusing rather than instructive.

[4] S. Cyp., Ep. 68, n. 5, *ad Florent.* (*Antenicene Fathers,* V, 373 f.). Rather strained is the explanation of Blat, *Commentarium,* 1921, l. II, 341.

[5] See c. 2, 6°, III, 4.

quently, can. 329, § 2 reads: *the Roman Pontiff freely nominates the bishops.* Whether the term *nominare* is used to describe designation or nomination in the sense of royal or governmental nomination, may perhaps be disputed. But the following paragraph of can. 329 appears to refer to free appointment.[6] Hence the sense of paragraph 2 is that the Roman Pontiff has the inherent right to nominate to all vacant sees, unless, as § 3 states, the elective right has been granted to a body of electors. By this body of electors—*aliquod collegium*—is here understood a diocesan chapter which has the right to elect, not merely to propose or recommend. Therefore can. 329, § 3 refers to can. 320, which requires an absolute majority, not counting invalid votes, unless the statutes of the respective chapter demand a greater number, say, for instance, two-thirds of the votes. It is not necessary to recall the requisites for valid election laid down in can. 160–178; for in English-speaking countries there are no elective chapters in the juridical sense.[7]

There is, however, a question arising from our canon, namely, concerning the source or *origin of episcopal jurisdiction.* This question was hotly agitated, but not settled, at the Council of Trent. The theologians who debated it formulated the point at issue quite clearly. Do the individual bishops receive their jurisdiction immediately from God, or from the Roman Pontiff? The question, therefore, is not, whether the episcopal jurisdiction in general, or of the body of bishops as such, is of divine institution; much less whether the episcopate as such was divinely established;—but whether the individual bishops

[6] Blat, *l. c.*, p. 342, is of a somewhat different opinion, but § 3 of can. 148 appears to contradict him.

[7] Except as far as the election of an administrator is concerned.

(*singuli episcopi*) obtain their jurisdiction from the Pope as the immediate vehicle and grantor of this jurisdiction.[8] There is no doubt that a certain legend found in the writings of Clement of Alexandria as well as the so-called Dionysius the Areopagite had some influence in forming the affirmative opinion.[9] The exaggerated texts of Gratian, which are not borne out by history, could not contribute to the viewpoint of St. Thomas, who compares the papal power with that of the Caesars over the proconsuls.[10] Yet even the authority of the *princeps scholae* was insufficient to convince the Fathers of the Council of Trent of the efficacy of the arguments proposed during a long meeting on Oct. 20, 1562, by Fr. Lainez, S. J. One of his opponents argued thus: The episcopate is a sacrament, and consequently of divine right or institution; but jurisdiction belongs to the episcopate, therefore, episcopal jurisdiction, too, is of divine right. To this rather solid argument, the answer was *Nego maiorem,* because the episcopate is not an order distinct from the priesthood.[11]

[8] See Bouix, *De Episcopo,* 1859, I, 55 ff.

[9] This legend is contained in the *Hypotyposeis* of Clement Alex., book V (see *Clements Alex.,* by Otto Stählin, Vol. III, 196, in *Die Griech. Christl. Schriftsteller der ersten drei Jahrhunderte,* Leipzig, 1909), where we read: Christ is said to have baptized Peter, and Peter baptized Andrew, James and John, and these the rest of the Apostles. On episcopal consecration our text is silent, but a reference to it appears in some other edition (see Phillips, *K.-R.,* I, 188).

[10] See c. 1, Dist. 12; cc. 1 and 2, Dist. 22; c. 15, C 24, q. 1.—Can. 1, Dist. 22 is, in a somewhat distorted rendering, taken from Peter Damian (Migne, *P. L.,* 145, 67 f.); cfr. S. Thom., *Sent.* II, Dist. 44, q. 2; v. Scherer, *K.-R.,* 1886, II, 557 f.

[11] See Pallavicini, *Istoria del Concilio di Trento,* 1846, Vol. III, 105 ff.; 103 f.; Grisar, in the *Zeitschrift für kath. Theologie,* 1884, 453 ff.; 727 ff.; J. B. Andries, *Alphonsi Salmeronis, S. J., Doctrina de Iurisdictionis Episcopalis Origine ac Ratione,* 1871.

The question remained *in statu quo*. The Vatican Council, while it attempted no solution, certainly did not countenance the Lainez theory, but mentions ordinary and immediate episcopal power.[12] Does the Code favor the Lainez idea? We hardly believe so; for the text, as given, clearly states that the bishops are placed at the head of individual churches by divine institution. Consequently, we may safely say that episcopal jurisdiction is radically and fundamentally conveyed by consecration, but may, *de facto*, be withheld in case no assignment is made to a particular church. No one ever doubted, or can reasonably doubt, that the very nature of the primacy of the Roman Pontiff requires subjection to him as the supreme authority.

The Synod of Pistoia (1786) was wrong in emphasizing the rights of the bishops to the detriment of unity in faith and government. For although it is legitimate and proper to say that the bishops are placed over the individual churches by divine institution, and therefore obtain the necessary power through consecration, yet bishops, too, need higher guidance, not only in matters of faith and morals, but also as to universal discipline. Therefore, the episcopal power must not be conceived

[12] Sess. IV, cap. 3: "Tantum autem abest, ut haec Summi Pontificis potestas officiat ordinariae ac immediatae illi episcopalis iurisdictionis potestati, qua episcopi, qui positi a Spiritu Sancto (cf. Act 20, 28) in Apostolorum locum successerunt, tanquam veri pastores assignatos sibi greges singuli singulos pascunt et regunt, ut eadem a supremo et universali pastore asseratur, roboretur ac vindicetur, secundum illud sancti Gregorii Magni: "Meus honor est honor universalis Ecclesiae. Meus honor est fratrum meorum solidus vigor. Tum ego vere honoratus sum, cum singulis quibusque honor debitus non negatur." (*Enchiridion Symbolorum*, ed., Denzinger-Bannwart, 1921, n. 1828).

as so stereotyped that it could not be subject to eventual changes, either restrictive or extensive. If this were not so, the door would be wide open to schism and heresy.[13]

On the other hand it is quite certain that the Pope, with all his power, could not abolish the episcopal office and rule the Church through vicars.

Another corollary is that the bishops, being the successors of the Apostles, are superior in power to the priests (*presbyteris*). This is *de fide*.[14]

THE PROCESSUS INFORMATIVUS

Before an ecclesiastic is promoted to the episcopate, his fitness must needs be ascertained by means which the Apostolic See has determined (can. 330).

We have seen above that the metropolitans, and, in case of Italian bishops, the Pope, formerly examined the candidates before they were consecrated. After the XIIIth century, more particularly through the reservations introduced by Benedict XII, in 1334, all bishops had to be confirmed by the Apostolic See. The Council of Trent prescribed an *instructio* concerning the qualities of the candidates, entrusting this examen to the metropolitans, who were commanded to perform this task conscientiously at provincial synods and to send a report of the proceedings to the Apostolic See. There another investigation was made by a Cardinal designated for that purpose. The "Cardinal Relator," assisted by three

[13] See propp. 6 and 8 of the Synod of Pistoia, condemned by Pius VI, *"Auctorem fidei,"* Aug. 28, 1794 (Denzinger-Bannwart, n. 1506, n. 1508).

[14] Conc. Trid., sess. XXIII. can. 7; cap. 4 (Denzinger-Bannwart, n. 960; n. 967).

other cardinals, reported at a (secret) consistory, and their report was read and adjudged in another (semi-public) consistory. Finally the chosen candidate was announced in a public consistory.[15] Gregory XIV regulated this *processus* somewhat more in particular, especially as to the inquiries to be made outside the Roman Court (*extra Curiam*) and the procedure at Rome itself.[16]

Clement VIII (1592-1605), according to Fagnani,[17] instituted the *Congregatio Examinis Episcoporum,* which, however, examined only candidates for Italian bishoprics. In 1627, Urban VIII issued a very detailed instruction regulating the procedure for the *processus informativus.* The "*Sapienti consilio*" of Pius X, June 29, 1908, which was embodied in the Code, committed the canonical inquisition or *processus* to the S. C. Consistorialis, which receives the documents from the Secretary of State in cases where the civil governments have something to say concerning candidates for bishoprics.[18]

For the United States and all countries where the new mode of "proposal" is observed, the decree of July 25, 1916, is the norm for the *processus.*[19]

QUALITIES REQUIRED BY LAW

The Code (can 331) rules that to be fit for the episcopacy,

[15] Sess. XXII, cap. 2, *De Ref.*

[16] "*Onus Apostolicae,*" May 15, 1591 (Bouix, *l. c.,* 208 ff.)

[17] Commentary on c. 10, X, I, 9, n. 61.

[18] See can. 248, § 2; can. 255.

[19] The decrees of March 30, 1910, and July 2, 1910 (*A. Ap. S.,* II, 286, 648) are out of date.

(1) The candidate must be of *legitimate birth.* Legitimation by a subsequent marriage is not sufficient; the parents must have lived in lawful wedlock at the time the candidate was born.

(2) The candidate must be thirty years of age and in *sacred orders, i. e.,* a priest. As to age, the old law was not quite definite up to the Decretals, and the Tridentine Council did not fix the precise age, but simply referred to the canons. As to the time during which one had to be in sacred orders, the Council required only six months, whereas the new Code requires five years.

(3) The *moral* qualifications are: he must be of good moral standing, pious, zealous for souls, prudent, and endowed with all the qualities necessary to govern the diocese to which he is appointed.

(4) The *scientific equipment* is thus described: the candidate should be a doctor, or at least licentiate, in theology or Canon Law, with a degree obtained in a Catholic university or institute approved by the Holy See; or if he has no degree, he should be well versed in theology and Canon Law. It is not probable now-a-days that, as in the time of Honorius III (1216-1227), one would be made a bishop who could not read grammar, but the standard of scholarship laid down by the Code must be strictly insisted upon. For, as Barbosa says, a bishop without learning is like a ship without a rudder, a clock without weights, a hen without wings.[20] A bishop should be particularly "well versed" in theology and Canon Law because the former governs the court of conscience, while the latter is required for the *forum externum.*

Athenaeum is generally used for a university, whilst *institutum studiorum* may mean a faculty or college, such

[20] *De Officio et Potestate Episcopi,* P. II, alleg. 1, n. 25.

as, for instance, St. Thomas Academy in Rome, or a seminary which has the right to confer academic degrees. There is a hidden reminder of the requisite of the academic degree in the fact that the bishops of this country append "D. D." to their names:

If the candidate belongs to a *religious* institute, he must have a title similar to D. D. or D. J. C. obtained from his major superior, or at least a testimony of real ability.

The *maiores superiores* are those mentioned in can. 488, 8°, *viz.*, the Abbot Primate, the Abbot President, the Abbot, the Superior General, the Provincial, and all others who have powers equivalent to those of a provincial.

The same qualities are required for all candidates for episcopal sees, no matter whether they are elected, presented, or designated, for the law makes no distinction. Nor is there any reason for granting an exemption where the public welfare is concerned, since these qualities are prescribed not merely for the person, but for the office, which is one of great dignity and importance. Nothing, says Innocent III, is more offensive to the Church of God, than unworthy prelates ruling souls.[21] The Roman Pontiff alone is competent to judge whether or not the qualities described in the papers relating to the *processus informativus* are sufficient. Of course, in case of necessity or utility, the Pontiff may dispense with some of the required qualifications.

Can. 332 rejects the claim of the so-called *regalists* that the right of presentation includes investiture, and that a bishop can consequently enter upon the government of his diocese without papal investiture and docu-

[21] C. 44, X, I, 6.

ments.[22] The contrary is true. Only by ratification on the part of the Apostolic See can one become bishop or Ordinary of a diocese.

This confirmation is preceded by two acts: the *profession of faith* and the *oath of allegiance* to the Church. The oath must be taken before an Apostolic delegate, personally and not by proxy. If the consecration is performed in virtue of Apostolic letters, the *oath of fidelity or loyalty* is taken into the hands of the consecrator.[23]

EPISCOPAL CONSECRATION

(Can. 333)

Unless prevented by a lawful obstacle, one promoted to a bishopric, even though he be a cardinal of the Holy Roman Church, must receive consecration within three months after receiving the Apostolic letters, and within four months, take up residence in his diocese. The cardinal-bishops of the suburbicarian sees are the only ones exempted from this rule. The text is based upon an old law, and its meaning is evident, with the possible exception of the time within which a newly consecrated bishop must go to his diocese. For it might be construed either that the four months run from the date of consecration, or that they must be counted from the date of having received the Apostolic letters of confirmation. In the former case, seven months would be granted; in the latter only four. We believe that the latter interpretation is the correct one, because otherwise the clause would have no proper starting-point; and hence the omission of

[22] See our Commentary, Vol. II, 347. Here we may observe, once for all, that we shall refrain from repeating references which are fully given in our commentary.

[23] Can. 1406; *Pontificale Rom., De Consec. Electi in Episc.*

the *terminus a quo* in the last clause must be supplied from that of the first or, *"a receptis litteris."* This seems still more probable if we consider the omission of the word "months" in the last clause.

The consecration of bishops, when it takes place in Rome, must be performed in a consecrated church or pontifical chapel; but this law does not oblige outside of Rome (*Ephemerides Liturgicae,* Sept., 1923, page 363).

TAKING POSSESSION OF THE DIOCESE
(CAN. 334)

To understand the following canon it should be remembered that during the vacancy of the episcopal see the diocesan chapter was entitled to govern the diocese. To the chapter succeeded the Vicar Capitular, or Administrator, to be elected by the same chapter within eight days from the occurring vacancy. After his election the chapter had no right to interfere with the government of the diocese, or to retain any share in its administration, either temporal or spiritual. The Vicar Capitular was to remain in office until the newly appointed bishop exhibited his credentials to the chapter. For, as Boniface VIII points out, the Apostolic See never sends out legates or delegates without credentials; and, besides, if proof is demanded from one who poses as a priest, how much more diligent should be the investigation if a bishop is to be received![24] Notwithstanding all these provisions, civil governments often forced their nominees or candidates upon chapters under the title of Provisor or Vicar General, and thus practically removed the administrator, and, as it were, prevented the Apostolic See from investing or confirming the candidate. Against

[24] C. 1, Extrav. Comm., I, 3.

this abuse Pius IX, Aug. 28, 1873, issued the Constitution *"Romanus Pontifex,"* part of which is embodied in our text.[25] This document *forbids* any interference or intrusion in the government of a diocese before canonical possession has been taken of the same—no matter whether such interference comes from the episcopal candidate in person (as by assuming the reins of government or appointing a procurator or provisor) and no matter what may be the title or pretext under which he thus acts, *viz.*, on the claim of being nominated or presented by those entitled to nomination or presentation. The law permits one designated to the episcopacy to retain and exercise the office of administrator, *officialis* (can. 1573), or *oeconomus;* provided he held these offices before his appointment to the episcopate. As bishop-elect, however, he cannot validly be chosen (anew) for any of the aforesaid offices.[26]

The law, then, prescribes the *mode* or act of taking juridical possession. A residential bishop takes possession of his diocese as soon as he presents the Apostolic letters of appointment to the cathedral chapter. This exhibition (*ostendere*) must be performed *in the diocese* to which he has been appointed. Hence he cannot call the chapter to another diocese, because this is a juridical act with legal consequences, and is therefore limited as to territory. The juridical act must be recorded by the secretary of the chapter, or the diocesan chancellor, who must be present when the Apostolic letters are shown to the chapter. However, if the newly appointed bishop should choose to present the Apostolic letters *by proxy,* he is free to do so.[27] Wherever *diocesan consultors* take

[25] *A. S. S.*, 1879, Vol. VII, 401 ff.

[26] The penalty in can. 2394.

[27] According to the *regulae iuris* 68 and 72.

the place of the cathedral chapter, these must be present in a body (*collegialiter*), together with the chancellor or secretary. Whether the Apostolic letters are shown to each one, or read to all who are present, is irrelevant. But it must be signified in such a way that the contents of the letter are understood, by all, or at least, that the act cannot be misconstrued.

PART II

EPISCOPAL DUTIES AND PRIVILEGES

THERE are incumbent on all residential bishops five obligations, which the Code mentions successively, *viz.*: residence, Mass for the people, diocesan report, ***visitation ad limina,*** and diocesan visitation.

RESIDENCE
(CAN. 338)

Residing, from *residere* (*re* and *sido*), to settle, take up one's abode anywhere in order to rest or to remain there, implies staying in a place. But in connection with pastoral residence it means not only material staying, but "a laborious or formal abiding" in the place of one's office. The Code defines the law of residence, the reasons which justify absence, the obligation of residing at the cathedral, and the liability incurred by unlawful absence.

1. *Bishops, even though they have a coadjutor, are obliged by the law of personal residence in the diocese.* This obligation arises from their office, which is one of superintendence and vigilance. And if this office is of divine institution, it is not too much to say that, radically at least, the precept of residence rests on divine law.[1] If the bishops are set over particular churches by divine

[1] Bouix, *De Episcopo,* Vol II, pp. 2 ff., endeavors to weaken this argument, but admits that the probable opinion is in its favor.

institution, it clearly follows that residence is required by the divine law.

Popes and councils have again and again insisted on this important duty. Gregory the Great was very strict in enforcing the obligation.[2] Benedict XIV complained of some bishops in Ireland who gravely neglected it.[3] The reform councils of Constance and Trent made this duty imperative on all bishops, no matter whether they were Cardinals, patriarchs, primates, or metropolitans, or merely ordinary bishops.[4] Neither does the Code distinguish, for it simply says, *episcopi,* and stresses the fact that the circumstance that a bishop has *coadjutors,* whether coadjutor bishops in the proper sense, or auxiliaries, does not dispense him from the obligation of personal residence. The reason is a twofold one: bishops are, as a rule, chosen for their personal qualities (*de industria personae*), and the obligation of residence, as stated, means personal attendance and vigilance, not merely a material, passive stay in the diocese. Every pastor, as long as he is a pastor—and he does not cease to be such by receiving a coadjutor—is responsible for his flock.

Note that the first section of this canon insists on residence in the *diocese,* not at the cathedral.

2. However, the Code allows *the three months' vacation* granted by the Tridentine Council. This time does not include the canonical visit to the tombs of SS. Peter and Paul (a mere pleasure trip, even when undertaken as a pilgrimage, cannot be called a *visitatio ad limina*)

[2] *Epp.,* l. IX, 8; X, 10; XIII, 24.

[3] *"Grave et permolestum,"* Aug. 15, 1741; also, *"Quam primum,"* Dec. 3, 1740.

[4] *Const.,* Sess. 43, cap. 12; *Trid.,* sess. VII, cap. 1, *De Ref.*; Sess. XXIII, cap. 1, *De Ref.*

nor the time spent at a council at which attendance is of obligation. (A friendly visit to a provincial or plenary council at which a bishop is not obliged to be present, because not belonging to that province or country, could not be reckoned off.) Lastly,—and this is intended mainly for countries (*e. g.*, Austria) in which the bishops are *ex officio* deputies to parliamentary assemblies—bishops are allowed to deduct from the three months allowed them for vacation the time they are in duty bound to spend outside their dioceses to attend parliamentary sessions. Foreseeing, however, human frailty and astuteness, or perhaps also good faith wrongly applied, the Code forbids any arbitrary interpretation as to the three months' period by stating that no combination or putting together is allowed, because that would favor a bishop's absence from his diocese.

No mention is made of lawful absence because of a civil office, for in that case circumstances are not at the command of the bishops.

Note that a vacation may not be prolonged by taking the last three months (Oct. to Dec.) of one year and the first three months (Jan. to March) of the following year, and staying away six months in succession. All these questions were proposed to the S. Congregation under Urban VIII and solved as stated in the Code.

3. Let the bishop not be absent from his *cathedral church* during Advent and Lent, on Christmas day and Easter, on Whitsunday and Corpus Christi, except for a grave and urgent reason. The text says, *"ne absint,"* which materially differs from the wording of the first section. For bishops, to comply with the letter of the law, may reside in any part of the diocese; but they must repair to the cathedral church on the days mentioned.[5] For, says the Tridentine Council, it is becoming

that the sheep, on those days especially, enjoy the presence of their pastor and be nourished by him.[6]

The same Council alludes to the reasons which may excuse bishops from being present on those days, *viz., munia episcopalia, i. e.,* episcopal functions, to be performed elsewhere. There may, however, be other reasons. For the text is general. As to Corpus Christi, we believe that the law does not oblige in our country, or if it does, it applies to the Sunday to which the feast is transferred.

4. The last section of this canon on residence ordains that if a bishop is unlawfully absent from his diocese for more than six months, the metropolitan must report him to the Holy See, and if he is himself a metropolitan, this duty devolves on the senior suffragan. *Reasons* which would justify such absence, according to the Council of Trent, are:

(a) *Christian charity,* for instance, preaching to infidels and heretics, or a lecture which cannot well be postponed; spiritual or bodily help to confrères and people in time of distress or calamity, such as war, earthquakes, etc.;

(b) *Urgent necessity,* relating to his own person, for instance, persecution, ill-will of the people, or personal infirmity requiring a change of climate; however, the danger of contracting disease in times of epidemics and

[5] Fagnani, on cap. 1, X, I, 2, n. 101, maintained that residence at the cathedral was meant by the Tridentine Council; however, our text cannot be stretched so far. But it is quite true what Bouix says (*l. c.,* II, 6), that, if the bishop does not reside in the cathedral city, he should have his vicar-general and court there.

[6] *Trid.,* Sess. XXIII, cap. 1, *De Ref.*

perils common to pastors and flock does not excuse the bishop from keeping residence;

(c) *Obedience* to superiors, for instance, a call to Rome or to the metropolitan, perhaps for a special meeting, trial, canonization, etc. To this class belong the *visitatio ad limina,* and assistance at councils, as is expressly stated in the Code;

(d) *Evident utility* of Church or State, for instance, as peacemakers, as extraordinary envoys or counsellors, as strike settlers, etc. However, if time permits, it is advisable to inform the metropolitan or the Apostolic See.

Reports concerning the non-observance of the law of residence are to be made to the S. C. Consistorialis.

Although the danger of catching a contagious disease does not excuse bishops from diocesan residence, yet they are not obliged to administer the Sacrament of Confirmation to persons infected with such a disease, nor to administer the Sacrament of Baptism or Penance to such persons, except in cases where no other minister is available who could perform these duties.[7]

THE MISSA PRO POPULO
(CAN. 339)

The Code first of all mentions the obligation of every residential bishop to apply the Mass for his people, which obligation is then explained and applied to different cases.

1. Every residential bishop must, from the time he takes possession of his diocese, apply the Mass for his people on all Sundays and holydays of obligation, even on suppressed holydays. Neither the meagreness of

[7] Benedict XIV, *De Syn. Dioec.,* XIII, 19, 6.

revenues nor any other cause furnishes an excuse for not complying with this law. This latter clause is similar to "notwithstanding anything to the contrary," and therefore includes all residential bishops. The time when this obligation begins is the moment of taking possession of the diocese, *i. e.*, after the letters of appointment have been shown to the diocesan chapter or the board of consultors. This moment also starts the obligation mentioned in § 6 of this canon, but no farther back than May 19th, 1918, when the Code went into effect, because the law is not retroactive (can. 10).

The first of these paragraphs is taken almost verbally from the Apostolic letter of Leo XIII, *"In suprema,"* June 10, 1882, where the Pontiff says that one of the duties of a pastor is to pray and offer sacrifice for his flock, and that this obligation, considered in general and as to fixed days, is based on divine law. The Code, insisting upon the Tridentine decrees, authentically explains and extends this rule to all bishops and cardinals who govern a diocese, and to abbots and prelates *nullius*.

The *days* on which a bishop has to say Mass *pro populo* are all Sundays, all holydays of obligation celebrated *in foro et choro,* and such suppressed feastdays as are now celebrated only *in choro.* The feastdays *in foro et choro,* or holydays of obligation, are: New Year's Day, Ascension, Assumption of the Blessed Virgin Mary, All Saints, Immaculate Conception, and Christmas (First Mass). The suppressed feasts are: Epiphany, Purification, St. Matthias, St. Joseph (March 19), Annunciation B. M. V., Monday and Tuesday after Easter, Monday and Tuesday after Pentecost, SS. Philip and James, Finding of the Holy Cross, Corpus Christi, St. John the Baptist, SS. Peter and Paul, St. James, Nativity of the

Blessed Virgin, St. Matthew, St. Michael (Sept. 29), SS. Simon and Jude, St. Andrew, St. Thomas, St. Stephen Protomartyr, St. John the Evangelist, Holy Innocents, Pope St. Sylvester (Dec. 31).

2. On Christmas, or any holyday which falls on a Sunday, it suffices to apply *one* Mass for the people.

3. However, if a holyday of obligation is transferred to another day in such a way that the obligations of hearing Mass and abstaining from servile work are also transferred to that day—*ad quem*—the Mass must be applied on the day to which the feast has been transferred. Otherwise the obligation remains attached to the day *a quo*. There is, as far as we are aware, no such transfer made in this country. For the six holydays are celebrated on their respective days, and the others impose no obligation.

4. To apply the Mass *pro populo* is a *personal obligation* of the Ordinary. A coadjutor-bishop is not obliged to obey this law. Should the bishop be lawfully prevented, he may have the Mass *pro populo* applied by another on the day in question. If this cannot be done, the bishop himself, or another in his name, may apply the Mass on another day. It is, of course, supposed that this "other one" will receive the ordinary stipend. The clause: "Si ab eius celebratione *legitime impediatur*" (§ 4) does not mean that a bishop is unable to say Mass at all, but that he is not able to apply his Mass *pro populo,* for instance, because he has to say a Mass for a special intention, at a funeral, or *pro sponso et sponsa,* or because he has a *pingue stipendium* for that day and no other. All these and similar reasons are considered lawful, provided a bishop complies with the rest of the canon.

5. If a bishop governs two or more dioceses that are

united *aeque principaliter,*[8] or if he administers another diocese besides his own, he complies with this obligation by saying and applying one Mass for all the people entrusted to his care. From this it appears legitimate to infer that a bishop who retains the pastorship of his cathedral, is obliged to say and apply only one Mass on the days prescribed, because the cathedral parish forms part and parcel of the diocesan flock.

6. The last section of this canon is, if not a penal sanction, a canonical warning of the strictly moral character of the obligation, which rests on a *titulus iustitiae,* and not merely *caritatis.* Therefore, if a bishop has neglected to fulfill the obligation mentioned in the preceding paragraphs, he shall as soon as possible apply *pro populo* as many Masses as he has omitted.

"Quam citius" means, as soon as he becomes aware of his mistake, and that no unlawful delay should be interposed; in other words, he must make the application as soon as he has a day free for this purpose. Other obligations contracted by reason of ordinary stipends must cede to this obligation. In case the bishop is lawfully prevented from saying the omitted Masses "as soon as possible," he may satisfy this obligation through another, but he is not obliged to do so. The obligation of bishops to apply the Mass *pro populo* began May 19, 1918, the day the Code went into effect. For in regard to bishops and bishoprics there could have been no dispute as to pastoral duties or limits or the nature of a benefice.

It is becoming that *titular bishops* should, *ex caritate,* offer holy Mass occasionally for their diocese; but they are not strictly obliged to do so (cfr. can. 348, § 2).

[8] The meaning of *aeque principaliter* is explained in can. 1419, n. 3.

DIOCESAN REPORT
(CAN. 340)

In as far as the diocesan report is, to some extent at least, detached from the visit to Rome, this canon contains a new law, *viz.*, partly contained in the decree of the S. C. Consistorialis, Dec. 31, 1909, *"A remotissima,"* and partly formulated anew. Since the Code has been promulgated, the formula mentioned in the first section of can. 340 has been issued by the S. Congregation of the Consistory, Nov. 4, 1918, and published in the official bulletin.[9] The formula contains twelve chapters with 100 points. In the introduction reference is made to the decree of Dec. 31, 1909, to the Code, and also to the fact that the Pope personally revised and approved the formula, which took effect in the year 1921. Then three general rules are laid down, which shall be inserted in the first paragraph. This reads: *All bishops are bound to make to the Sovereign Pontiff a quinquennial report on the status of their diocese according to the formula issued by the Apostolic See.*

The bishops who are obliged by this law are *all,* no matter of what dignity or rank, who govern a diocese, or, as the Code calls them, the *residential bishops.* The reason why the annual report is to be made to the Sovereign Pontiff is the latter's primacy and the bishops' subordination to him. But this does not mean that the report must be handed to the Pope personally; it goes to the Consistorial Congregation.

The formula issued in 1918 demands:

[9] *"A remotissima,"* in *A. Ap. S.,* II, 13 ff.; the formula *ibid.,* X, 487 ff.

1°. that the report be composed, either written by hand or typewritten, in Latin; that it be signed by the Ordinary himself, not by the vicar-general or the coadjutor-bishop, or by any one else jointly with the Ordinary.[10] The reason is because the bishop is the sole judge and authority responsible for the report and the status of the diocese. The signature must be accompanied, in the same writing as the text, by the day, month, and year in which the report was dispatched.

2°. In the first report of each Ordinary, all the (100) questions contained in the formula must be accurately and fully answered.

3°. In subsequent reports the Ordinaries may omit whatever concerns the temporal status of the diocese, provided that status remains unchanged.

The meaning of these rules is that every newly appointed Ordinary, now and forever after, and every Ordinary, though not lately or newly appointed, who sends in the first report required from 1921 on, must answer all the questions in full. Therefore, the Ordinaries of our country, who have to send in their report in 1924, must fill out the formula in full. In the report of 1929 they may omit what concerns the temporal status of their diocese, provided it has not materially changed (*de minimis non curat praetor*). A newly appointed bishop must make the full report, even though his predecessor has done so before. This is like an inventory which Rome wishes to preserve.

The *temporal status* of the diocese is chiefly contained in the first chapter of the formula, but ch. II also contains much regarding temporal administration. Therefore, if no substantial change has occurred, reference to the first report is certainly allowed. Ch. III, n. 24 f.,

[10] Blat, *l. c.*, p. 366.

ch. VI, n. 41, ch. VIII, n. 54–59, n. 61–65 also remain intact.

The concluding paragraph of the formula requires that in "subsequent" reports the Ordinaries should also state the result of the observations eventually made by the S. Congregation upon the previous report, whether or not there was any progress, or whether the condition of the diocese remained about the same.

2. Section 2 rules: *The five years' terms are fixed and common* (to all Ordinaries under the respective class) and are reckoned from the first day of Jan., 1911. This date (1911) is the beginning only for the class first mentioned. Therefore, taking the third quinquennium at 1921, we understand the Code as follows:

In 1921, the bishops of Italy, Corsica, Sardinia, Sicily, Malta, and other minor adjacent islands had to send in their reports (the third one for them since 1911).

In 1922, the bishops of Spain, Portugal, France, Belgium, Holland, England, Scotland, and Ireland with the adjoining islands;

In 1923, the bishops of the rest of Europe, *i. e.*, the Eastern portion, from the Rhine to the boundaries of European Russia, with the adjoining islands;

In 1924, the bishops of *America,* North as well as South, and the adjoining islands;

In 1925, the bishops of Africa, Asia, and Australia, and the islands adjoining these countries.

Therefore our American bishops have to send in their first full and detailed report, according to the formula of 1918, between the first of January and the last of December, 1924.

3. The last section sets forth a reasonable exception, the acceptance of which is left to the prudent judgment of the bishop. If a bishop has been governing his diocese

only two years or less when his turn comes for making his report to the Holy See, he may omit it. The reason is evident. A new bishop is hardly able to know the status of his diocese, especially if he has not yet visited all portions of it. In this case then, for instance, an American bishop who has not yet governed his diocese for two years in 1924,[11] may postpone sending his first report until 1929.

THE VISITATIO AD LIMINA
(CAN. 341)

Each and every bishop—no matter what his rank or dignity—must visit Rome in order to venerate the tombs of the Apostles SS. Peter and Paul and present himself to the Roman Pontiff in the same year in which he is obliged to make his diocesan report. The bishops outside Europe may make their visit every ten years.

This *ad limina* visit is a personal obligation, but may be made through the coadjutor, if the bishop has one, or through a worthy priest who is a resident of the diocese. However, such delegation requires just reasons, which must previously be accepted by the Holy See. To this, otherwise evident, text a few historical and practical remarks may usefully be added.

The tombs of the princes of the Apostles were from the earliest times visited by the faithful and their pastors as a sign of veneration for the founders of the Roman Church. Cajus, a presbyter of Rome, told the heretic

[11] The question may arise: If one has been a coadjutor for a number of years, but succeeded to the see only in 1922 or 1923, may he omit the report? We think he may, because he was not, during the coadjutorship, a governing or residential bishop in the sense of the canon.

Proculus: "I can show you the trophies of the Apostles." Two epitaphs testify to the custom of sacred visitation, notably that of Abercius, bishop of Hierapolis in Phrygia, who came to Rome to venerate the tombs of the Apostles towards the end of the second century. Of course, the Italian bishops, who were immediately subject to the Bishop of Rome as their metropolitan, were more numerous and regular in making those visits. But it is also true that missionary bishops were sometimes summoned to Rome, whence they had received their mission. Since Paschal II (1099–1118) the metropolitans obliged themselves at the reception of the pallium to visit the *sacred limina* at stated intervals. Later on all the bishops who were either directly or indirectly consecrated by the Pope had to comply with this obligation. A more uniform discipline was ushered in when Sixtus V, in his Constitution *"Romanus Pontifex,"* Dec. 20, 1585, ruled that all patriarchs, primates, metropolitans, and bishops should present themselves at regular intervals before the Roman Pontiff, to give counsel and make suggestions conducive to the betterment of ecclesiastical conditions. Benedict XIV enjoined also the prelates and abbots *nullius* to make the *ad limina* visit. He permitted bishops who were lawfully prevented from making the visit personally, to send a representative,—either a secular or regular dignitary, or a priest in good standing. This representative had to report the reason of the impediment. Titular bishops are not obliged to make the visit, because the text binds only those who have to make a report.

In Rome, the bishops visiting the churches of St. Peter (Vatican) and St. Paul (Via Ostiense) must present themselves in the sacristies of the two basilicas and inscribe their names in a book kept for that purpose.

The *relatio status* must be handed in at the Apostolic

Chancery (Via Vittore Emanuele) to the S. C. Congregatio Consistorialis.

During their visit, the bishops must call on the Sovereign Pontiff, in order to pay their respects to the Vicar of Christ and, as stated above, to offer their counsels if requested.

THE DIOCESAN VISITATION
(CAN. 343–346)

The Code, in the first of these four canons, defines the purposes of the canonical visitation. It is to preserve sound and orthodox doctrine, to foster good morals, to correct evil customs, to promote peace, innocence, piety, and discipline among people and clergy, and to regulate everything for the best interests of religion, as far as circumstances permit. The importance of the subject seems to require a more detailed comment on these four canons.

From the *Codex Canonum Ecclesiae Africanae* we learn that, at the beginning of the fifth century, synods ruled that the prelates should visit their provinces annually. A council of Tarragona, in 516, commanded the bishops on the occasion of this visit to see especially to the repair of the churches. In the Frankish Kingdom, especially under Charlemagne, the bishops were accompanied by a count (*comes*), who took cognizance of and decided cases of a more or less civil nature. A decretal of Innocent IV (1252) forbids avaricious exactions, allowing the necessary victuals but no gifts or donations of any kind. These rules were renewed by the Council of Trent, from which our text is taken almost verbally.

(1) The episcopal visitation must be made by the bishop in *person,* unless he is prevented by a legitimate obstacle, *e. g.,* sickness, or other urgent duties, in which

latter case the visitation may be entrusted to the vicar-general or some other trustworthy priest.

(2) The *whole diocese* must be visited within the space of *five years,* which is a modification of the Tridentine law.

(3) Not more than two companions are allowed, who may be taken from the number of canons, though these should remonstrate against the exercise of this right by the bishop; and the Code reprobates any contrary privilege or custom.

(4) The *persons, things,* and *places* subject to the diocesan visitation are:

(a) The whole *secular clergy* of the diocese, also cathedral and collegiate chapters, in all matters spiritual and temporal. The *laity,* too, may, if the Ordinary judges it expedient, be examined about things pertaining to faith and morals, the administration of the Sacraments and the care of the church property. The church trustees in particular are liable to be questioned.

All *non-exempt religious* of both sexes are amenable to the canonical visit; also *exempt religious* who are *pastors* of souls, concerning their pastoral conduct.

(b) The *places* which should and may be visited are the cathedral church, the parish churches, and public and semi-public oratories not in possession of or administered by exempt religious. Oratories which, though incorporated into an exempt religious body, are served by secular priests are subject to visitation.

The bishop may also visit any *parish church* held and administered by exempt religious, and inspect the baptismal font, the confessionals of the pastor and his assistants, and the altar of the Blessed Sacrament.

The bishop may also visit the meeting places or chapels or *confraternities* or *sodalities* of lay persons, even though

these are erected in churches belonging to exempt religious; also hospitals and orphanages and *schools* which are maintained, even by exempt religious, as *parish* or *elementary schools.*

High schools and colleges conducted by exempt religious are liable to canonical visitation by the Ordinary only in so far as religious and moral training is concerned.

Cemeteries common to the faithful and exempt religious are subject to episcopal visitation, whilst cemeteries exclusively reserved for exempt religious are not.

(c) The *things* which the bishop should examine and inspect must be determined by the purpose of the canonical visit, as outlined in the first clause of canon 343, § 1, and mentioned in the *Pontificale Romanum.* The second point: "That he may know how the church is administered spiritually and temporally," offers an opportunity to investigate:

(α) Whether the *Blessed Sacrament* is kept properly and in the right place; whether there is a sanctuary lamp; whether pyxis, monstrance, lunula, etc., are of the prescribed material, kept clean and free from verdigris; whether the sacred species are changed with sufficient frequency, etc.

(β) Whether the *altars* are made according to rubrics, and if images or statues are erected upon them, whether these are in conformity with the mind of the Church and in good taste, and especially whether any extraordinary images or representations disapproved by the Church are exposed for veneration.

(γ) Whether the *baptismal font* is properly and conveniently kept and the holy oils can be easily found and are preserved in a decent place.

(δ) In the *sacristy* he should observe the neatness and

color of the sacred vestments, the chalices and other sacred vessels.

(ε) The *confessionals* should be examined as to their grates, and also with regard to veils, stole and surplice, where these are prescribed, etc.

We come now to what the Code says about *exempt religious.*

(1) Note that exemption from canonical, or rather episcopal, visitation is not comprised under the general concession of exemption, as has been more than once decided by the S. C. Rota, but is valid only if granted by a special concession of the Apostolic See, as canon 344, § 1 clearly emphasizes. Wherefore no *communicatio privilegiorum* may be invoked by exempt religious as to the canonical visitation.

(2) However, as far as the exempt religious themselves are concerned, the bishop is entitled to visit them only in *cases expressly stated in the law.* These cases, as far as the diocesan visitation is concerned, were partly mentioned above. They are:

(a) The *parish churches* administered by exempt religious, including the Blessed Sacrament altar, the tabernacle, the baptismal font and holy oils, the confessionals, the pulpit, the sacristy, the belfry with the bells belonging to the parish, the cemetery, etc.

(b) The *oratories* or *chapels* of confraternities whose members are lay or secular persons, although administered by exempt religious;

(c) The *schools* conducted by exempt religious, except the secondary schools, which are subject to visitation only as far as religious and moral education is concerned;

(d) *Divine worship,* whether it is carried out according to the sacred canons, and no superstitious practices are

tolerated in the churches and oratories of exempt religious.

Canon 345 lays down the *mode of procedure* when correction of abuses becomes necessary. There are two procedures, the paternal and the judiciary. The former consists in secretly admonishing the delinquent. This method may be employed towards the clergy as well as the laity. But it would not be paternal to threaten penalties in order to compel one to reveal crimes or transgressions, or to make a public admonition serve as a preliminary to criminal procedure.

Much less in keeping with the bishop's office as a father would be the infliction of ecclesiastical censures. Penances which have no judiciary character, *e. g.,* a retreat, would not exceed paternal correction. If the bishop proceeds paternally, no appeal is allowed, because no sentence has been given; recourse is permitted, but *in devolutivo* only; that is to say, the correction must be accepted and the injunctions carried out, until a superior judge reverses the sentence.

Metropolitans should not accept any recourse against a bishop's paternal procedure as long as the latter has remained within the limits prescribed by law.

What are the *aliae causae* mentioned in canon 345? We presume they are such as do not fall directly under the objects of an episcopal visitation, epecially those which require a *formal trial, e. g.,* the removal of a parish priest, the procedure against pastors refusing to comply with the law of residence, although a mere precept concerning that point would not exceed the paternal method; lastly, all criminal cases requiring trials.

Can. 346 repeats the old and oft inculcated duty not to make the episcopal visitation disagreeable for those

concerned, and more especially establishes the *remuneration* allowed by law. The Code permits the *procurationes* and expenses of the journey. By *procurationes* are understood food and lodging. No prescription is admissible against this lawful claim of the visiting bishop. However, those who have to furnish the *procurationes* may pay their equivalent in money. With the exception of this support and the expenses of the journey, neither the bishop nor his companions are allowed to demand or accept any gifts or donations.

EPISCOPAL PRIVILEGES

The term "privileges," as applied to episcopal prerogatives, is to be understood in the sense of distinctions or rights common to all bishops. In fact, even those favors which the Code styles privileges (can. 349) are, now-a-days more or less rights, because embodied in the common law, rather than privileges in the strict sense. Therefore, the use of the term "privileges" may be justly extended to other rights which the bishops enjoy in common.

PONTIFICAL FUNCTIONS

1. *Bishops may exercise pontifical functions in their respective territories, and within their diocese, even in exempt places.* In order to perform such functions outside their dioceses, however, they need the express or at least reasonably presumed consent of the local Ordinary and of the religious superior if the church where they wish to pontificate belongs to an exempt order. Hence, if a bishop wishes to perform pontifical functions, say in a Benedictine church which is outside his own territory or

diocese, a twofold consent is required, *viz.*: that of the Ordinary and that of the religious superior.

2. To exercise pontificals, says the Code, means to perform such sacred functions as, according to liturgical rules, require the use of *pontifical insignia, viz.,* crozier and mitre. The crozier (*baculus* or pastoral staff) signifies pastoral power and care, while the mitre indicates knowledge of both Testaments and protection against the enemies of faith and sound doctrine.[12] Why these two emblems are especially mentioned is thus explained in the *Caeremoniale Episcoporum*: Because the mitre and crozier go together. The crozier, says the same authority, is used by the bishop in his own diocese, and may be used in other dioceses only with the permission of the local Ordinary. The functions which require these insignia are consecrations, ordinations, blessings, processions, pontifical vespers and Mass (except "Requiem").[13] Crozier and mitre, then, are emblems indicative of pontifical rights, and consequently are limited in their use to the bishop's own diocese, as episcopal rights are, in general, confined to their territory. Although the exercise of pontificals is legally limited to a bishop's own diocese, yet, since all bishops enjoy the same right, it is but logical that the Code admits of *presumed* permission. Such may be supposed to exist if an outside bishop has been invited to give a lecture, or for some ecclesiastical function, or if the local Ordinary is absent, and the vicar-general tendered the invitation. Furthermore, there would be a reasonable presumption if the local Ordinary

[12] See Thalhofer. *Handbuch der kath. Liturgik,* 1883, pp. 892 ff.; Kraus, *Geschichte der christl. Kunst,* 1908, I, 533; II, 498 ff.

[13] Lib. I, cap. XVII, n. 8.

were known to be willing to give his consent in this matter.

There is a recent decision of the S. C. of Rites which, to some extent, bears on this subject. A bishop, either residential or titular, is not allowed to celebrate Pontifical Mass or Vespers in the church of another bishop—the question arose in connection with the titular church of a Cardinal, *i. e.,* in Rome—though he does not make use of the crozier or the throne, but only of the faldstool, without having consulted the diocesan Ordinary.[14] However, the Code is evidently more liberal.

3. The bishop who grants permission to perform pontifical functions in his territory may also permit the use of throne and canopy. This sounds quite natural and logical, but the decree quoted in Card. Gasparri's edition reminds us that there has been a controversy concerning this point. The decree of May 9 (resp. June 12), 1899, states that this question had been more than once asked in Rome and was formulated by the S. C. of Rites as follows: Has the diocesan bishop the right to cede the throne to another bishop together with the appropriate or usual assistance of the canons? The S. Congregation, having asked the opinion of the Liturgical Commission, and having carefully discussed and pondered the matter, answered: *Affirmative,* provided the guest (*episcopus invitatus*) be not the diocesan bishop's coadjutor or auxiliary, or his vicar-general, or a dignitary or canon of his own cathedral. As, however, the suburbicarian cardinal bishops and other (titular) cardinals can grant the use of the throne only to cardinals, so is it becoming that

[14] S. Rit. C., Dec. 4, 1903 (*Dec. Auth.,* n. 4124).

bishops of other dioceses who are cardinals, should cede their episcopal throne only to cardinals.[15]

This decree is still in force,[16] and therefore a bishop cannot cede his throne to his own coadjutor or auxiliary or vicar-general, or to any dignitary or canon of his own cathedral. The reason is evident: there is but one bishop in each diocese, and the throne is the expression of jurisdiction. In order, therefore, to preclude any encroachment or detrimental custom, the law forbids the permission to be given to dignitaries of a bishop's own cathedral or diocese. On the other hand, the second clause, *viz.*, as to the comity or proportion between cardinals, is only directive, and may, therefore, be dispensed with for good reasons without recourse to the Holy See.

Here we may conveniently add some remarks about the dignitaries who enjoy the use of pontificals.

1. *Cardinals* are entitled to use pontificals with throne and canopy in all churches outside of Rome, but if they wish to pontificate in a cathedral church not their own, they must advise or inform the local Ordinary.[17]

2. *Legates* of the Holy See, if endowed with the episcopal character, may perform pontifical functions in all churches without the permission of the local Ordinaries; only for the cathedral church they need the permission of the local Ordinary, which rule certainly must be understood according to can. 337, § 1, so that a presumed permission is sufficient.[18]

3. *Metropolitans* may perform pontifical functions in

[15] *Dec. Auth.*, n. 4023.
[16] S. Rit. C., Nov. 26, 1919 (*A. Ap. S.*, XII, 180, 182, V, 3).
[17] Can. 239, § 1, n. 15.
[18] Can. 269, § 3.

the churches of their suffragans without the special or presumed permission of the latter; but to exercise pontificals in the cathedral church of a suffragan the metropolitan must previously inform the suffragan.[19]

4. *Coadjutor-bishops* should, if not lawfully prevented, perform pontifical and other functions whenever they are asked by their bishop to do so.[20] However, since the decree of the S. Congr. of Rites, of June 12, 1899, is still in force, as stated above, the coadjutor has to abstain from the use of the throne, instead of which the faldstool is to be prepared for him. Besides, according to some older decisions, the use of the staff would be forbidden.[21] But, since crozier and mitre belong together, we cannot see how these decisions can be reconciled with the *Caeremoniale Episcoporum.*

5. *Abbots or prelates nullius,* although not consecrated bishops, may perform pontifical functions with throne and canopy in their own territory.[22]

6. *Governing abbots,* after having received the prescribed abbatial blessing, may perform pontifical functions, like abbots *nullius, i. e.,* in their own territory (only the purple skullcap is excluded).[23] The number of pontifical functions is no longer restricted, as it was by the well-known decree of Alexander VII, Sept. 27, 1659. But another question arises: Can an abbot exercise pontifical functions in *other places?* First and above all it must be remembered that these abbots are not *nullius,* and hence the term "in their own territory" must be converted

[19] Can. 274, n. 6.

[20] Can. 351, § 4.

[21] See our *Commentary,* Vol II, p. 381.—It is but fair to add that a lawful custom may upset the rule stated above.

[22] Can. 325.

[23] Can. 625.

into an equivalent one. This can only mean their own church or churches. This is exactly the meaning of a decision of the S. Rit. C., in which these words occur: *"in suis tantum ecclesiis aut pleno iure subiectis."* [24] A similar expression is found in a later decision: *"vel ceteras eiusdem instituti ecclesias."* [25] Hence, an abbot may pontificate in all *churches incorporated,* according to can. 453, § 1, with his monastery. However, if he wishes to pontificate in such an incorporated church in *another diocese* than the one in which his monastery is located, it seems but proper that, according to can. 337, § 1, he should have the express or presumed permission of the local Ordinary.

Another question is: May the bishop grant permission to an abbot to pontificate in a church not incorporated *pleno iure* with the monastery of said abbot? The answer has been given more than once by the S. Congregation of Rites. Thus in a case concerning Bahia of Brazil, it was decided: *"negative in omnibus sine speciali Apostolico indulto."* [26] The consequence is that, unless a privilege, or an indult, or a legitimate custom can be produced, abbots are not allowed to pontificate in any other church except their own. A privilege of a general nature to this effect is unknown to us, and as far as we were able to ascertain,[27] no such privilege was granted after the famous decree of Alexander VII, in 1659. As to indults, it is out of our reach to ascertain them. Hence custom remains. And

[24] S. Rit. C., July 11, 1739 (*Dec. Auth.,* n. 2348).

[25] S. Rit. C., May 23, 1846 (*Dec. Auth.,* n. 2907).

[26] S. Rit. C., May 23, 1846, ad 3 (*Dec. Auth.,* n. 2907); also O. S. B. at Barcelona, July 11, 1739 (*Dec. Auth.,* n. 2348).

[27] Molitor, *De Privilegiis,* 1917, p. 17, n. 27, stretches the privileges really granted, or misquotes, for instance, S. Rit. C., Dec. 18, 1846 (*Dec. Auth.,* n. 2923), which plainly states what we say above.

this, at least in our country and in Switzerland, seems to testify, if not juridically, at least practically, to the observance that abbots, if invited by bishops into their diocese, may perform pontifical functions there.

A last question is: Does the above mentioned decree of the S. Congregation of Rites, of June 12, 1899, apply to *coadjutor-abbots?* That is: May these use the throne of the abbot? There is some analogy between abbots and bishops, and can. 351, § 1, may undoubtedly be referred also to coadjutor-abbots. This text states that their power must be interpreted according to their letters of appointment. But here the analogy stops. If a coadjutor is appointed with full power in spiritual and temporal matters, while the *coadiutus* only retains title and precedence, there can be no analogy between a coadjutor-bishop and a coadjutor-abbot. Hence the coadjutor-abbot is entitled to all the insignia and rights of an abbot without exception. Of course, if the *coadiutus* wishes to pontificate, he has the first right; but otherwise the coadjutor may use the throne even in the presence of the *coadiutus.*

PRECEDENCE

(Can. 347)

Precedence is a relative term, and the right to precede over others is based on power, either of jurisdiction or of order. But jurisdiction is the determinant of the various degrees. Therefore, the greater the power, the greater the distance from those subject to that power. From this explanation it may be seen that precedence does not mean "foremost" in an order or series of persons. Rather might the Gospel saying be applied: "The first shall be last." The more persons precede or walk before one, the more distinguished shall the latter appear.

This is the meaning of the 33d title of the Decretals of Gregory IX: *De maioritate et obedientia.* Those who govern must be obeyed and honored by those who are governed; and since the spiritual power is more sublime than the temporal power, it is becoming that spiritual rulers should not be treated like "footstools" by the temporal rulers.[28] It also follows that the inferior clergy should manifest their duty of obedience towards their superiors by keeping their rank and order. Order and discipline are required, not only in monarchies, but also in democratic commonwealths. At the same time empty pomp and show, even on religious occasions, border on pharisaism.

Here may be inserted what the Code establishes concerning precedence among Ordinaries:

1. *Cardinals* precede all prelates, even patriarchs and papal legates, unless the legate be a cardinal resident in his own territory. A Cardinal *a latere,* however, outside of Rome, precedes all others (can. 239, § 1, n. 21).

2. *Patriarchs* enjoy precedence over primates, archbishops, and bishops, but not in the latter's own territory, archdiocese or diocese (can. 280, compared with can. 347).

3. *Metropolitans,* or archbishops, have precedence over bishops and their suffragans even in the latter's own dioceses (*ibid.*).

4. *Bishops, in their own dioceses,* have precedence over archbishops and bishops, except cardinals, papal legates, and their own metropolitan. *Outside* of their diocese, precedence is to be settled according to the time of promotion made in public consistory, so that among bishops the one who has been promoted earlier to the episcopal rank precedes the one whose promotion occurred later. If, perchance, two were published the same day, the one

[28] Innocent III to the Eastern Emperor, c. 6, X, I, 33.

who has been ordained priest earlier, precedes the other; and if the dates of ordination coincide, the natural age decides (can. 106). Diversity of rites constitutes no difference.

5. *Papal legates,* though they may not be endowed with the episcopal character, precede all Ordinaries who are not cardinals (can. 269, § 2).

6. The *vicar-general* has precedence over the whole clergy of the diocese on public and private occasions, even if the bishop is present, and over all dignitaries and cathedral canons in choir as well as in chapter meetings, unless there is a clergyman endowed with episcopal character, and the vicar-general lacks that character. Nor does it make any difference whether the vicar-general is a religious, for the wording of the text is general (can. 370, § 1).

7. The *vicar-capitular,* or administrator, during the vacancy of the episcopal see, enjoys the same right of precedence as the vicar-general (can. 439).

8. *Apostolic administrators,* if *permanently* appointed by the Holy See, enjoy the same rights as residential bishops; if they are appointed only for a time (*ad tempus*), they enjoy the same rights as vicars capitular (can. 315).

9. *Abbots or prelates nullius,* if not consecrated, enjoy in their own diocese the right of precedence like residential bishops. Outside their diocese, it appears that they should cede to every bishop, either residential or titular, and therefore take their place immediately after the bishop, but before the vicar-general or vicar-capitular.

10. *Regular prelates* must follow the rules laid down in can. 491 concerning precedence among religious. Hence, first come the prelates of canons regular, then those of monastic bodies, and then those of other clerical

regulars. With respect to the secular clergy, a cathedral or collegiate chapter, when present as a body, precedes all religious, even prelates and abbots, everywhere. But individual canons do not precede these prelates, unless they are titular bishops.[29]

PERSONAL PRIVILEGES OF BISHOPS

(Can. 349)

We call the following favors *personal* privileges because they are attached to the office of a bishop, and hence are not communicable to others.[30] They may, therefore, also be termed official prerogatives. Our canon has two sections, of which the first mentions the privileges common to *all* bishops, residential and titular. The date from which the enjoyment of these prerogatives begins is the moment in which they have received *authentic information* of their appointment. Authentic is the information which is issued by the competent authority. This is the S. Congregatio Consistorialis, which, however, dispatches the document, either bull or brief, through the Secretariate of State or the Apostolic Chancery. Until this document is in the hands of the appointee, he cannot make use of these privileges, even though he may have been informally apprized of his appointment. Only in case the Secretariate of State (of the Vatican) should send an official dispatch, would the notice be authentic, and the appointee be entitled to the

[29] See Vol. III of our *Commentary*, pp. 62 ff. In the *Decreta Auth. S. C. Rit.* we could find only one decision, which, however, refers to a very particular case.

[30] S. Poenit., July 18, 1919 (*A. Ap. S.*, XI, 332), at least not habitually.

use of these privileges.[31] This section (§ 1) does not enumerate all the privileges, or rather rights, which bishops enjoy; others are mentioned under the respective headings. Quite a few favors bishops have in common with the cardinals. And since these latter may, at the same time, be residential bishops, it is not out of place to set forth the full list, pointing out distinctly those which all bishops enjoy.

Cardinals enjoy the following privileges (can. 239):

1. To hear *confessions* everywhere in the world, also those of religious of both sexes, and to absolve the penitents from all, including reserved sins and censures, with the exception of the four cases most especially reserved to the Apostolic See, and cases arising from the violation of the secret of the Holy Office.[32]

2.* To select for themselves and their *familiares*[33] a confessor who, by this very choice, obtains jurisdiction which he might otherwise not have, and may absolve from sins and censures as stated under the preceding number. The confessor of bishops may also absolve from cases reserved to the bishop (can. 349, § 1, 1°).

3.* To preach the Word of God everywhere; but bishops should have the (at least presumed) consent of the local Ordinary. This presumption is supposed if the latter does not object.

4.* To celebrate, or permit another to celebrate in their presence, one Mass on Holy Thursday and three Masses on Christmas night. Here can. 349 inserts the clause, "provided the bishops are not obliged to celebrate

[31] S. O., Aug. 24, 1892 (*Coll. Prop. Fid.*, n. 1810).

[32] This secret is imposed on the employees of the Holy Office and the S. C. Consistorialis; *A. Ap. S.*, I, 82.

[33] *Familiares* are those waiting on these prelates and depending on them for a livelihood or remuneration.

in the cathedral." If the holy oils are to be blessed—which is usually the case—bishops cannot make use of this privilege. But if sickness or some other weighty reason should prevent them from blessing the oils, the privilege may be applied.

5.* To bless everywhere, by the sign of the Cross, and thereby to attach all the usual Apostolic indulgences to, beads and other kinds of rosaries, crosses, medals, statues, and scapulars approved by the Apostolic See, and to impose the scapulars on all without obligation of enrollment. Can. 349 adds for bishops the obligatory clause: "however, with the observance of the rites prescribed by the Church." Therefore, the sign of the Cross alone is not sufficient in case a bishop wishes to make use of this privilege; he has to employ the formulas of the Roman Ritual for the respective articles.[34]

6.* To erect, with one blessing, the Stations of the Cross in churches and oratories, including private oratories and chapels of pious institutions, and to attach the indulgences granted to the pious exercise of this devotion; also to bless sacred images for the use of those of the faithful who are prevented either by sickness or some other lawful obstacle from making the Stations of the Cross, and to attach all the indulgences granted by the Roman Pontiffs for the devotion of the Way of the Cross. Here, too, can. 349 adds the condition that bishops use the prescribed rites.

7.* To say Mass on a portable altar, not only in their own residence, but wherever they may be; and also to permit another Mass to be said in their presence.

8.* To say Mass at sea, with the usual precautions, namely, that the sea be calm and the ship not rolling,

[34] See, however, Formulary III, of March 17, 1922, V, nn. 6, 7, 11.

that it be far from the coast, and another priest or deacon be present to hold the chalice in case of great agitation of the ship.

9.* To say Mass in all churches and oratories—hence also of exempt religious—according to their own calendar or directory.

10.* To enjoy the favor of a privileged altar daily.

11.* To gain, in their own chapels, all the indulgences for which is prescribed a visit of a church or public oratory of a city or place where cardinals happen to be; this privilege is extended to their *familiares*.

12.* To bless the people everywhere; but in Rome this blessing may be imparted only in churches, pious institutes, and assemblies of the faithful.

13. To wear the pectoral cross over the mozzetta and to use the mitre and the crozier.

14. To say Mass in any private oratory without prejudice to the grantee of the privilege.

15. To exercise pontifical functions with throne and canopy in all—including exempt—churches outside of Rome; but in cathedral churches only after the local Ordinary has been informed. Cardinals may also have *deacons of honor* everywhere except in Rome. (*Ephemerides Liturgicae*, Sept., 1923, page 363).

16. To enjoy the honors usually shown to local Ordinaries.

17. To attest or authenticate in the external forum, privileges orally granted by the Pope.

18. To have a private oratory exempt from the canonical visit of the local Ordinary.

19. To dispose of the revenues of their benefices, even by last will, with due regard, however, to can. 1298.

20. To perform consecrations and bless churches, altars, sacred vessels, abbots, etc., excepting, however,

the blessing of holy oils if the cardinal has not received episcopal consecration; but they have to make use of the rites prescribed and, besides, obtain the consent of the local Ordinary.

21. To precede all other prelates, as stated above.

22. To confer tonsure and minor orders, provided the candidate has dimissorial letters from his Ordinary.

23. To administer confirmation, which they must have properly recorded (can. 798 f.).

24. To grant an indulgence of 200 days, also *toties quoties,* to institutions and persons under their jurisdiction or protection; also to be gained in other places, but only by those actually present.

The privileges enumerated under n. 2 to 12, with due regard to the clauses inserted, are shared by all bishops, residential as well as titular.

Furthermore, the bishops just mentioned are allowed to wear the *episcopal insignia,* the use of which is regulated by liturgical rules, partly found in the *Caeremoniale Episcoporum.*

The episcopal insignia are: the mitre, the crozier or pastoral staff, the pectoral cross, the pontifical ring, dalmatics and tunicella, gloves and sandals. Leo XIII added the skullcap of violet color for all.[35] The crozier is the oldest and most significant episcopal ornament, in use since the fifth century, whilst the mitre (*taenia*=a priestly band) dates only from the tenth century, but is mentioned in several papal letters and in the Decretals. The residential bishop's name must be mentioned in the canon of the Mass.

These privileges are enjoyed by all bishops from the time they are authentically informed of their appoint-

[35] "*Praeclaro,*" Feb., 1888.

ment, even though not yet consecrated or in actual possession of their diocese.

The second section refers only to *residential bishops,* to the exclusion of titular bishops, and restricts the rights mentioned to the *terminus a quo,* or date from which they have taken *lawful possession* of their diocese, according to can. 334. From this time on, though perhaps not yet consecrated, residential bishops enjoy the following rights:

1. To receive the revenues of the episcopal *mensa,* or the *reditus mensae episcopalis.* The revenues or property of each church or diocese were divided into four or three parts, one of which was reserved for the support of the bishop, who generally lived with his clergy in one residence. As long as the *vita canonica,* or life in common, was observed, the bishop and the cathedral clergy were supported from the common funds, mostly consisting of real estate, from which tithes and revenues, natural products and money were raised. After the canonical life was abolished, in the XIth century, there were two *mensae,* one for the capitulars and another for the bishop, who administered it by means of a *vicedominus.*[36] All this, of course, presupposes a real endowment. After the secularization of 1803, these moneys were paid in part by the governments, some of which still have this duty incumbent on them. In the U. S. the Church had no other revenues than the free donations or oblations of the faithful. Therefore a means was resorted to, which is certainly not in keeping with Canon Law, *viz.,* the *cathedraticum,* which appears to take the place of the *mensa* or episcopal revenues. Although this is not a canonical means of supporting the

[36] See *Kirchenlexikon,* ed. II, Vol. VIII, 1262.

bishop, yet it is at present the only one available. Therefore, we may as well call the *mensa episcopalis* the *cathedraticum* which is paid by all those who are obliged thereto (see can. 1505).

2. Bishops are, furthermore, entitled to grant an *indulgence* of 50 days in places subject to their jurisdiction. This indulgence may also be gained by exempt religious.

3. Lastly, bishops may erect a throne with a canopy in all, even the exempt, churches of their diocese.

Whether all these privileges may also be claimed by *abbots* or *prelates nullius* seems doubtful, especially since can. 323 only mentions the "same ordinary powers and the same obligations," without any reference to episcopal privileges. Nor is can. 215, § 2 against this interpretation. For the nature of the office (*natura rei*) appears to distinguish substantially between one endowed with the episcopal character and one not so endowed. Besides, since stress is laid in can. 349, § 1 on the episcopal character, because even titular bishops enjoy the privileges there mentioned, it is but logical to exclude those who are not bishops.[37] This is our personal view, which we state *remissive*.

[37] Blat, *l. c.*, p. 376.

PART III

THE LEGISLATIVE AND ADMINISTRATIVE POWER OF BISHOPS

Bishops, says can. 334, § 1, *are the ordinary and immediate pastors in the dioceses entrusted to their care,* because their power accrues to them in virtue of the episcopal office, not by mere delegation. What the term *immediate,* taken from the decrees of the Vatican Council,[1] means is to be determined by the bishop's dependence upon the supreme authority of the Church on the one hand, and by his independence of any secular or clerical power on the other. Pius X complained against the illegal procedure of the government of Portugal, which tried to separate clergy and people from the centre of ecclesiastical unity and to subject them to its own power.[2] The episcopal power, though it may be offered by electors or patrons, is not conferred by them, but by the Sovereign Pontiff, and is attached to the office. *Immediate* in the truest sense would mean that the episcopal power is the result of consecration. But it is hardly probable that the Code intends to settle a controversy which has been debated for so long a time and with such an excess of zeal by canonists. Probably the term here only means that, aside from papal interposition, no other power on earth shares in the bestowal of the episcopal jurisdiction.

With regard to his inferiors, the bishop of a diocese is their free and independent judge, and not responsible

[1] Sess. IV, c. 3

[2] "*Iamdudum,*" May 24, 1911 (*A. Ap. S.,* III, 217 ff.)

to them, but subject only to the supreme lawgiver and the common law of the Church.

Since the Church is a monarchical society, whose supreme and independent head is the Roman Pontiff, who is endowed with full and sovereign power over the entire Church,[3] it logically follows that the bishops rule their districts under the authority of the Roman Pontiff. It is he who assigns the territory, and he is the first and last judge concerning the persons of bishops and their administration. The Pope is entitled to withdraw from the jurisdiction of bishops certain persons and things, and reserve these to his own judgment. Therefore it would be schismatic and subversive of the hierarchical order to maintain that a bishop can do in his diocese what the Pope can do in the universal Church (*"episcopus potest in sua dioecesi, quod papa in tota ecclesia"*). This, in fact, although not in words, was the doctrine proposed by the Febronian Synod of Pistoja, and justly condemned by Pius VI.[4]

The power of bishops is, therefore, locally circumscribed, it may and is restricted by exemptions and reservations, and determined by the common law, *i. e.*, the Code. It is, then, proper to point out briefly the local organization which, though a merely human element, more or less based on politico-historical conditions, is a fact which determines the jurisdiction of bishops.

SECTION I

Representatives of the Hierarchy

A few historical remarks will help to understand the origin and development of dioceses, patriarchates, and

[3] See can. 218.

[4] Propp. 6-8, Denzinger-Bannwart's *Enchiridion*, nn. 1506-1508.

archbishopries. The first epoch was marked by itinerant preachers and ministers. When it had passed, the local organization alone remained. This extended from cities to suburbs, which are of widely different proportions, but the center of gravitation was the city, where the bishop dwelt. It was generally held that each city should have its bishop with his own clergy. That these several bishopries or churches formed an ecclesiastical province similar to the political provinces, cannot be proved for the first three centuries. Neither did the existing prominent churches imitate the civil divisions, except in so far as there was a geographical connection between them. It was natural that *Rome* should be looked upon as the center of Christendom, as it was not only the capital of the *Orbis Romanus*, but also the place hallowed by the two chief Apostles and consecrated by their martyrdom. Thus the successors of St. Peter were already in the first three centuries the acknowledged metropolitans of the West, which first comprised the Italian peninsula, later, Western Illyricum with Gaul, and still later, the Spanish provinces. The Nicene Council (325), comparing Rome with the sees of Alexandria and Antioch, referred to the metropolitan organization of the former as an established fact. Alexandria and Antioch in the East retained for centuries their influence over the districts which had been allotted to them. In the reign of Theodosius I (379-395), the civil provinces of the Orient (Pontus, Asia, Thrace, and Egypt) had their ecclesiastical heads, who were later (in the fifth century) called patriarchs: the Orient with Antioch, Alexandria with Egypt, and Pontus, Asia, and Thrace under the newly established metropolitan of Constantinople, who, as occupant of the see of "New Rome," claimed the right of consecrating the bishops of these three provinces,—*i. e.*, jurisdictional,

hierarchic power over them. Thus the exarchs or metropolitans of Heraclea in Thrace, Ephesus in Asia, and Caesarea of Pontus dwindled to lower rank, whilst Jerusalem, under the intriguing Juvenal, after the council of Chalcedon rose to the rank of a patriarchate, until Islam invaded the East. In the *West,* if we except Milan, Aquileja, and Ravenna, we hear but little of metropolitans. Spain and Gaul show few traces of organization, with the sole exception of the *Vicariate of Arles,* founded by Pope Zosimus (417-418), which, however, proved a failure.[5]

More effective was the organization introduced by St. Boniface, the "Apostle of Germany," who acted strictly according to instructions received from Rome. A favorite theme of Pseudo-Isidore was the introduction of *Primates,* who are mentioned as early as the fifth century, assuming that they are identical with the vicars of the Apostolic See. Thus, besides Arles, a vicar was created at Thessalonica, and St. Boniface, as metropolitan of Mayence, was Primate of Germany. Later on the Primate of Hungary succeeded in upholding that title. In England, as we know from the history of the conversion of that country, St. Gregory intended to erect two provinces. Pope Nicholas I amalgamated the see of Bremen with the archbishopric of Hamburg. From the eleventh century onward the erection of bishoprics was reserved to the Holy See, so that not even papal legates were allowed to make a change in the territorial status of dioceses.

The erection and delimitation of new dioceses was generally effected *in forma bullae,* or by a document called "bull of circumscription."

[5] Duchesne (tr. by McClure), *Christian Worship,* 1903, pp. 14 ff.

In countries which maintained diplomatic relations with the Holy See, the civil government coöperated in the act of circumscription as well as in carrying the same into effect. Where, however, there was complete separation between Church and State, the Holy See established or reëstablished dioceses by papal bull. Thus Gregory XVI, by his Constitution *"Benedictus Deus,"* of July 17, 1834, determined the boundaries of several dioceses and Pius IX, Jan. 24, 1868, increased the number of dioceses in the United States. By the bull *"Universalis Ecclesiae,"* of Oct. 1, 1850, Pius IX reëstablished the hierarchy in England. The whole business of erecting and changing the boundaries of dioceses now lies with the S. C. Consistorialis.[6]

The Code (can. 215–217) insists upon strict organization of dioceses, with due regard to the distinction between dioceses proper and vicariates. For the latter § 2 makes allowance, *"ubi commode fieri potest."* But the dis-

[6] See can. 248, § 2. This division concerns the inhabitants as well as the territory; for the limits are the material, the subjects the formal element of the division. Thus the Code distinguishes between *subditi* and *non-subditi* by reason of domicile or quasi-domicile. Here *a practical case:* St. John's parish belongs to the diocese of C.; the neighboring St. Peter's parish belongs to the diocese of W. Some parishioners of St. Peter's parish, encouraged therein by the pastor of St. John's, claim membership in this latter parish, because they spend some Sundays in St. John's parish, where they possess some kind of a "shack," but really have all their property and their actual home in St. Peter's parish; in fact, juridically speaking, they have neither domicile nor quasi-domicile in St. John's parish—consequently they are subjects of the Ordinary of the diocese of W.

Question: Can the bishop of the diocese of W. and St. Peter's parish claim these recalcitrant—for such they are—parishioners?

tribution of dioceses into parishes must be enforced. For our country the passage referring to parishes of *different languages* is important, because in future none but English-speaking parishes can be erected without a special Apostolic indult. This law does away with inconveniences arising from uncertain boundaries and puts the division on the basis of territory, which alone should be considered for administrative purposes. But as it would cause difficulties to carry out the law at once, the Code moderates the law as to the existing parishes. Parishes for a certain number or class of *families,* especially of the nobility, such as exist in Spain, are unknown in America.

The Code, with some restrictions, also insinuates the erection of rural *deaneries.* The scope of this provision is apparent from can. 131, which urges conferences of the clergy of each rural district, as also from cc. 445 ff., which define the duty of deans to watch over the clergy of their districts.

Under the name of *diocese* the Code comprises also an abbey or prelature *nullius;* and by the name of *bishop* it understands also an abbot or prelate *nullius,* unless the nature of the matter or the context requires a different interpretation. The territory of each diocese should be

Answer: Undoubtedly he can, and should claim them, because the law is on his side. If he does not, he acts against the best interests of St. Peter's parish and allows confusion to enter and, besides, acts against the Code, which reserves division to the Apostolic See. The Ordinary of the diocese of C. must energetically insist that St. John's pastor shall not draw or encourage parishioners of St. Peter's to come to his church. Bishops are not entitled to bargain in this matter, unless we assume that boundaries are only a *plus minusve* determined line subject to the good pleasure of people, pastors, bishops. But then justice, the foundation of peace, will give way to mere fancy and strife will result.

distributed into districts, and a special church assigned to each of these with a determined part of the flock, headed by a local pastor, who shall take care of souls.

Apostolic vicariates and prefectures should be divided in a similar manner, wherever possible.

The minor divisions of a diocese mentioned in § 1 are called *parishes;* the minor divisions of a vicariate or prefecture, if they have their own rectors, are called *quasi-parishes.*

Henceforward no parishes are to be established for faithful of diverse languages or nationalities in the same city or territory without a special Apostolic indult. In regard to already existing parishes, nothing is to be changed without the advice of the Holy See.

Every bishop is to divide his territory into districts, each comprising several parishes, to go by the name of forane vicariates, deaneries, archpresbyteries, etc. Where such a division is impossible or infeasible by reason of special circumstances, the bishop should consult the Holy See, unless the latter has already made provision.

PATRIARCHS, PRIMATES, METROPOLITANS

The different degrees here mentioned owe their existence to local organization, and consequently to merely ecclesiastical, not to divine, law. Their significance is now much reduced.

Metropolitans are bishops who rule over a province composed of several bishoprics. However, under the present legislation, the term "rule" must be taken in a very restricted sense. In ancient times the power of metropolitans was more extensive, especially in regard to the election and ordination of provincial bishops, the convocation of synods, and trials of the higher and lower

clergy. This was but natural, since the metropolis was considered the mother see and center of the whole ecclesiastical organism. However, in course of time the authority of the metropolitans was diminished and went to the general center, Rome. Metropolitans are also called archbishops, though these terms are not entirely synonymous; for every metropolitan is an archbishop, but not every archbishop is a metropolitan (*e. g.,* the Archbishop of Ferrara). The title may be merely an honorary distinction. Every metropolitan has one or more suffragans, called thus since the eighth century. In the Frankish Kingdom and in Italy, especially at Ravenna, the tendency early manifested itself to diminish the number of metropolitan sees and augment the prerogatives of the remaining archbishops, in order that they might appear as primates. These primates were mostly the nominees of temporal rulers. The abuses of this system were so flagrant that the papacy set to work to arrest the extension of metropolitan powers and to prevent the creation of primatial sees, and, generally, opposed the growth of tendencies which threatened to lead to the establishment of national churches.

The title *Patriarch* or *Primate* is purely a title of honor and, aside from the right of precedence (can. 280), carries with it no special jurisdiction, except where particular laws exist to the contrary.

Our remark concerning the tendencies of certain bishops of France is corroborated by the canon quoted by Cardinal Gasparri in his edition. Rudolf, Archbishop of Bourges, claimed patriarchial rights; but Pope Nicholas I told him that, except where the canons and legitimate custom permit, patriarchs and primates have no power over other bishops, unless the Apostolic See has honored

a church by special privileges. Innocent III gave the same answer to an archbishop of Tours.[7] To-day, if we mistake not, only the Archbishop of Gran (Eztergom) in Hungary enjoys any noteworthy prerogatives.

Over each ecclesiastical province presides a *Metropolitan* or Archbishop, and the connection of that dignity with an episcopal see must be determined or approved by the Roman Pontiff.

The erection of provinces, like that of dioceses, is a *causa maior,* reserved to the Holy See[8] (S. C. Consist).

Besides the obligations and rights mentioned in can. 275–280, a metropolitan is bound in his own diocese by the same duties as a bishop in his, and enjoys the same rights.

The *rights* of a *metropolitan* over the diocese of his suffragans are stated in the Code (can. 274) as follows:

1) If the suffragan delays investiture beyond two months, the right of investing is granted to the metropolitan, supposing, of course, that the candidate is fit. It may be observed that the Code mentions only benefices of the *iuspatronatus,* which are of no importance for the metropolitans of our country.

2) To grant an *indulgence* of 100 days, as in his own diocese.

3) Should the chapter (our board of diocesan consultors) for any reason neglect to designate a vicar-capitular or *oeconomus* within the prescribed time, the right of making this appointment devolves on the metropolitan; if the vacant see is a metropolitan see or if the metropolitan see is vacant simultaneously with a suffragan see, the right of appointment passes to the senior suffragan.

[7] See c. 6, X, I, 31.
[8] Can. 215; can. 248, § 2.

4) To watch over the purity of faith and ecclesiastical discipline, and to inform the Roman Pontiff of eventual abuses.

5) To hold the canonical visitation, in case the suffragan neglects it; but the cause must be previously approved by Rome.

As soon as the visitation is ratified by competent authority, and the metropolitan enters the diocese of his suffragan, his jurisdiction becomes as it were ordinary over the subjects of his suffragan, but not over the suffragan himself. Hence, (a) he may preach the word of God without asking the suffragan and (b) he may exercise acts of jurisdiction in as well as outside of the confessional. To this latter faculty must be referred the investigation of the life and conduct of the clergy and the exercise of contentious jurisdiction. Coercive power may be exercised by the metropolitan against infamous clergymen, for notorious crimes which cannot be concealed, especially if the culprit has been tried by a civil or ecclesiastical court. Finally, the metropolitan may proceed against such as offer affronts or insults to his person or suite or who prevent the exercise of his jurisdiction during the time of the canonical visitation.

6) To receive appeals from a definitive sentence, or an interlocutory sentence which has definitive effect given by the suffragan's court; see can. 1594, § 1.

7) To decide, in the first instance, controversies concerning rights and property of the suffragans; can. 1572, § 2.

THE PALLIUM

The origin of the pallium is involved in obscurity. It seems to be an imitation of the *ὠμοφόριον*, a band of wool

worn at Mass by Oriental bishops. This ornament was in use also in Gaul and Africa. As a special sign of distinction the *pallium* came into general vogue after the sixth century. In its modern form it is a circular band, about two inches wide, worn around the neck, breast, and shoulders, with two pendants, one hanging down in front, the other behind. It is set with six black crosses of silk, one each on the breast and back, one on each shoulder, and one on each pendant. It is worn over the chasuble and signifies the plenitude of the pastoral and episcopal power which an archbishop has received from the Pope. The pallia are kept in a capsula over the tomb of St. Peter, and hence are said to be "taken from the body of St. Peter," after being blessed by the Supreme Pontiff on the eve of the feast of SS. Peter and Paul.[9]

The metropolitan is obliged, either in person or by proxy, to ask the Pope for the pallium within three months from the date of his consecration, or, if he is already consecrated, from the time of his canonical promotion in consistory.

Acts of metropolitan jurisdiction or of the episcopal order which require the use of the pallium, according to liturgical norms, are illicit if performed before the imposition of the pallium.

The metropolitan may use the pallium in every church of his province on the days determined in the *Pontificale Romanum,* or on other occasions specially granted to him; but he may not use it outside his province, even though the local Ordinary consents.

If a metropolitan loses his pallium, or is transferred to a different archiepiscopal see, he must obtain another.

The pallium can be neither lent, nor given away, nor

[9] See our *Commentary,* Vol. II, pp. 292 ff.

left to anyone after death, but all pallia received by a metropolitan must be buried with him. Archbishops who are metropolitans, or who hold that title, *must demand the pallium instanter, instantius, instantissime.* The reason for this urgent postulation lies in the significance of the pallium as indicative of the plenitude of the archiepiscopal jurisdiction.

If an archbishop is personally present in the Roman curia, he must come before the senior Cardinal Deacon, who imposes the pallium in the name of the Pontiff. The same applies to the procurator who requests the pallium for the archbishop, and who is, moreover, obliged to take an oath before the same Cardinal Deacon that he will conscientiously transmit the sacred ornament to the metropolitan.

Since the pallium signifies the plenitude of the pastoral office, it must be obtained before the metropolitan can exercise his archiepiscopal functions. Hence he cannot licitly invest clergymen presented by patrons, but he may licitly and validly make appointments in his own archdiocese; he cannot convoke a provincial council (can. 284), nor licitly perform any act of jurisdiction mentioned in can 274. Besides, before the reception of the pallium, a metropolitan cannot consecrate altars, or churches, or bishops, or chrism, or ordain clergymen, even though he may have been archbishop of another diocese.

The pallium may be worn by an archbishop in all the *churches* located *within the limits of his province.* Strictly speaking, its use is restricted to the celebration of the Mass, except *de requiem.* The festivel occasions on which the use of the pallium is permitted are indicated in the *Caeremoniale Episcoporum.*[10]

[10] Lib. I, c. 16, n. 6.

LEGATES OF THE ROMAN PONTIFF

The Pope has universal power, which is not limited by territorial restrictions. Therefore he may send ordinary or extraordinary legates to represent him, or for other purposes.

Dependent on the Curia, and on the Secretary of State in particular, are those representatives of the Sovereign Pontiff who go by the name of *legates*. The right of sending and receiving legates (*ius legationis activum et passivum*) is inherent in the spiritual sovereignty of the Pope.[11] It is evident, however, that the actual relations between the diverse governments will differ according to the connection existing in each case between Church and State (*sacerdotium et imperium*). In other words, where there is a complete separation between the spiritual and temporal power, papal legates will not exercise diplomatic functions in the proper sense, nor ask to be acknowledged by the public authorities as representatives of the Sovereign Pontiff. Their mission in such countries is limited to purely ecclesiastical matters, and their position or rank is strictly ecclesiastical.

After this preliminary observation a few remarks on the *historical development of the institution of papal legates* may not be out of place. We hear of a vicar apostolic of Illyricum, in the fourth century, whose office was entrusted to the Archbishop of Thessalonica (Saloniki). Similar rights and attributes were later bestowed on certain prominent sees in Gaul (Arles, 545), Spain (Seville, 520), and Germany (Treves, 909, Salzburg, 973). The incumbents of these sees were considered to be *ipso facto* papal legates, or *legati nati*. Out of these,

[11] See our *Commentary*, Vol. II, pp. 278 f.

in the eleventh century, grew the so-called primates, who have now dwindled into insignificance.

Another species of legates, of greater and more lasting importance, are the *legati missi.* Leo I (440–461) sent Julian of Cos as his legate to the Emperor Marcian, to enforce ecclesiastical discipline and watch over the purity of faith, as well as to observe the proceedings at the imperial court. If anything should be doubtful, he (Leo) would be ready to issue further instructions. This is presumably the office of those who were called papal *responsales* or *apocrisiarii.* In the Orient, their activity lasted until Caesaro-papism engendered the unhappy schism of the ninth century.

Legati missi were employed also in the West, not indeed permanently, but for temporary or transient missions, especially in the tenth and eleventh centuries, when the investiture fight was raging, and in the twelfth and thirteenth centuries, in connection with the crusades. The royal courts of England and France were not in favor of these papal legates; but Rome insisted upon its rights, and when permanent nunciatures had been established upon the model of the Florentine court (Medici) by Julius II, the papal legates became regular diplomatic agents of the Pope, who, in turn, received the envoys of the civil governments.

A third kind of legates are the *legati a latere, i. e.,* (sent) from the side of the pontiff. They are of rather recent date, used merely for transient purposes, and generally chosen from among the Cardinals. Thus Pius VII sent Cardinal Caprava to put into effect the Napoleonic concordat; thus *legati a latere* have appeared in recent years at the international Eucharistic Congresses.

Two centuries before John XXII complained that his rights were curtailed by Christian priests, Pascal II ut-

tered the same complaint against the King of England, who had refused to receive the Pope's legates. In the Code the Pope claims the right to send legates anywhere he pleases. This right can be denied only on the pretext that the Church is not a legal and necessary society founded by God, that the Sovereign Pontiff is not the spiritual ruler of that society, and that his power is not supreme, immediate, and independent within its own sphere. But none of these claims can be sustained, and the right asserted in can. 265 is essential to every sovereign.

The legislator is careful to specify that it is a strictly *spiritual jurisdiction* that is exercised by his legates, *viz.*, one that in no way exceeds the limits of the power exercised by the Pope himself. It follows that if papal legates would deal with political questions, or questions of a mixed nature which concern both Church and State, the "independent right" would become dependent on the State, which is sovereign in its sphere. This latter supposition is not verified, *e. g.*, in the case of the Apostolic Delegate at Washington, whose mission is confined to purely spiritual matters.

It is evident that the Pope will not send legates to entirely pagan countries, where no Catholic subjects live, although he can and often does send missionaries. But no government under whose régime a goodly number of Catholics live, has the right to exclude papal legates who come on a purely ecclesiastical mission.

A *legatus a latere,* then, is a Cardinal sent by the Sovereign Pontiff, and he has precisely as much power as the Pontiff pleases to bestow on him.

As we have said before, legates were not always welcome in the countries to which they were sent. One reason for this was that they sometimes committed grievous

blunders and often exceeded their faculties. In the light of history canon 266 almost sounds like a warning.

The following canons remove some misgivings which may arise in the Ordinaries of dioceses.

The office of the legates sent as *nuncios* or *internuncios,* is to foster friendly relations between the Apostolic See and the civil governments to which they are accredited; to observe the conditions of the churches of the territory assigned to them, and to inform the Roman Pontiff thereof. Besides these ordinary functions, they often exercise others by special faculty, which, however, are all delegated.

Legates who are sent out as *Apostolic Delegates* enjoy the ordinary power of watching over the conditions in the territory assigned to them and informing the Roman Pontiff thereof.

The office of legates, with all the faculties granted them, does not expire when the Apostolic See becomes vacant, unless otherwise provided for in the official letters of appointment; but it ceases if the mandate or mission is fulfilled, or by repeal duly intimated, or by resignation accepted by the Roman Pontiff. Due intimation implies an official or authentic document.

Since legates must respect the jurisdiction of the Ordinaries, any suspicion against them on the part of the latter would be unfounded. Leo XIII justly observed, following St. Gregory: "Their rights are sacred to us, their honor is that of the whole Church, and the pastor's glory is the solid strength and vigor of his brethren."

APOSTOLIC VICARS AND PREFECTS

There is a material difference between Apostolic vicars appointed for, *e. g.,* Thessalonica or Arles, and the

Apostolic vicars appointed now-a-days for missionary countries. The former were quasi *legati nati,* whereas the vicars of whom the present canon treats are really vicars of the Apostolic See appointed with episcopal jurisdiction for regions where a full diocesan organization cannot as yet be established or restored. Thus a vicar Apostolic was appointed for Brunswick and Lüneburg, in 1607, under the pontificate of Alexander VII (1655–67), and one for Malabar, where Nestorian disturbances made such a measure imperative. To-day there are Apostolic vicars or prefects in all the territories subject to the Propaganda. In England, an Apostolic vicar (Blackwell) was appointed in 1598, and Apostolic vicars continued in existence until 1850, when the hierarchy was reëstablished.[12]

Apostolic vicars and prefects enjoy the same rights and faculties in their respective territories as residential bishops in their dioceses, unless the Apostolic See makes reserves. Even though they have no episcopal character, they may, within the limits of their own territory, and during the time of their office, impart the blessings reserved to bishops, except the pontifical blessing proper, may consecrate chalices, patens, and portable altars with oil blessed by a bishop, grant indulgences of fifty days, and confer the tonsure and minor orders according to canons 782, § 3 and 957, § 2.

Blessings reserved to bishops are: the blessing of abbots, the dedication and consecration of churches, the blessing and laying of corner-stones, the blessing and reconciliation of cemeteries. The consecration of fixed altars is not expressly mentioned, and, therefore, probably not included in these faculties.

All these faculties, with the exception of such as re-

[12] See our *Commentary,* Vol. II, pp. 310 ff.

quire the episcopal character or cannot be exercised without the use of holy oils, can be communicated to simple priests.

Apostolic vicars and prefects may and must demand of all missionaries, even religious, that they show their credentials or other letters explaining their mission, destiny, appointment, and deputation, and in case of refusal must forbid them the exercise of ministerial functions.

All missionaries, including (exempt) regulars, must ask permission of the Apostolic vicars or prefects to exercise the sacred ministry within their territory. This permission should not be denied except in single cases and for weighty reasons. This is but a repetition of former injunctions.

Missionaries belonging to (exempt) regular orders are subject to the jurisdiction, visitation, and correction of the Apostolic vicar or prefect in all matters pertaining to the government of the mission, the care of souls, the administration of the Sacraments, the direction of schools, the gifts of the faithful made for the mission, and the execution of pious legacies made in behalf of the same.

Although an Apostolic vicar or prefect has no right, except in cases provided by law, to interfere with religious discipline, which depends on the religious superior, yet in the matters mentioned in § 1 of this canon, should a conflict arise between the command of the vicar or prefect and that of the religious superior, the former must prevail, saving the right of recourse *in devolutivo* to the Holy See and special statutes approved by the latter.

That regulars in charge of souls should be subject to the jurisdiction of the Ordinary in all matters pertaining to the exercise of this office, was established by the Council of Trent. Benedict XIV furthermore ordained that no appeal or injunction should delay or invalidate the exe-

cution of these decrees and their consequences, as applied by the Ordinaries, and logically extended that law to the regular missionaries. New experiences and questions elicited the remarkable Constitution of Leo XIII, *"Romanes Pontifices,"* of May 8, 1881, calculated to settle certain disputes between Ordinaries and regulars employed in parish or mission work. The rules laid down in that Constitution have been almost entirely taken over into the Code, as may be seen in the section on religious. Here we will only add a note on *schools*. Leo XIII has subjected all elementary (parish) schools conducted by religious, exempt as well as non-exempt, to the direction and visitation of the bishop, but in the same Constitution states that other schools, colleges, etc., conducted by exempt religious are not subject to the Ordinary, though they require his permission for their erection.

As to gifts made for the missions, the same Constitution ordains that all donations made for missionary purposes must be used for those purposes. Broadly speaking, Sunday and house collections, pew rent and stole fees are mission donations and must be employed as such and accounted for to the Apostolic vicar or prefect.

Religious orders which, like the Society of Jesus, have statutes approved by the Holy See concerning their missionaries, are entitled to have them respected by Apostolic vicars and prefects.

Where the number of secular priests is inadequate, the vicar or prefect may, upon having heard their superior, compel religious, even such as belong to exempt orders, who are attached to the vicariate or prefecture, to perform pastoral work,—with due regard, however, to their peculiar statutes approved by the Apostolic See.

Should a controversy arise between individual missionaries over matters pertaining to the care of souls, or be-

tween missionaries and others, or between different religious orders, let the vicars and prefects settle them as quickly as possible. The right of recourse *in devolutivo* to the Apostolic See, however, remains untouched.

That such controversies may arise, the incidents recorded in several constitutions of Benedict XIV amply prove. This Pontiff had to settle the somewhat heated dissensions between the Dominicans and the Jesuits about Chinese rites, and solve doubts about various customs regarding the administration of baptism and nuptial ceremonies.[13]

Apostolic vicars, like residential bishops, are bound to make the *visitatio ad limina*. If a serious obstacle prevents them from performing this duty, they may send a procurator, or commission some one living in the Eternal City to make the visit for them.

As prescribed in can. 340, Apostolic vicars and prefects are obliged to make an annual report to the Holy See on their pastoral office and everything that touches the state of their vicariate or prefecture, the missionaries, the religious, the discipline of the people, the frequentation of schools, the welfare of the faithful committed to their care. This report must be made in writing and signed by the vicar or prefect and at least one of his consultors (see can. 302). Each vicar and prefect shall, moreover, at the end of each year, send to the Holy See a report on the number of converts, baptisms, and the annual administration of the Sacraments, together with other noteworthy items.

Apostolic vicars and prefects must reside in the territory assigned to them and are not allowed to be absent therefrom for any considerable length of time without a

[13] *"Ex quo singulari,"* July 11, 1742; *"Redditae nobis,"* Dec. 19, 1744; *"Omnium solicitudinum,"* Sept. 12, 1744.

weighty and urgent reason, and without having consulted the Apostolic See.

Whenever necessary, they must visit their district, either personally or, if impeded, by proxy, and at this visitation take due measures respecting the faith, good morals, the administration of the Sacraments, preaching, the observance of feasts, divine worship, the education of youth, and ecclesiastical discipline.

These two paragraphs enjoin *residence* and *diocesan visitation,* but naturally a wide margin is left as to place and time in missionary countries. Due regard must necessarily be taken of distance and transportation facilities. Weighty and urgent excuses may arise at any moment and cannot always be foreseen.

They shall appoint a council consisting of at least three of their older and more experienced missionaries, whose opinion they shall hear, at least by letter, in important and difficult matters.

As far as circumstances permit, they shall also convoke the principal missionaries, religious as well as secular, once a year, in order to learn from their experience and advice what may be more perfectly arranged.

Vicars and prefects, like bishops, but with due consideration of persons and places, are obliged to keep archives for the preservation of documents pertaining to their districts. Similarly, but also in a manner proportionate to circumstances, the prescriptions concerning plenary and provincial councils (can. 281-291) must be applied to the provinces subject to the Propaganda; also the canonical enactments regarding diocesan synods (can. 356–362). However, no definite time is fixed for the celebration of either provincial councils or diocesan synods, and the canons of both must, before promulgation, be recognized by the Propaganda. It is permissible

to doubt whether religious superiors may be excluded from participation in a plenary council.

Vicars and prefects are under strict obligation to see to it that worthy Christian natives or inhabitants of their provinces are properly trained and raised to the priesthood. This truly Apostolic injunction was insisted upon in various papal constitutions and inculcated again and again by the S. C. Prop. Fide. Thus, on Nov. 23, 1845, the latter enjoined that natives should be trained and employed, not only in inferior mission work, such as catechizing, but also as missionaries, who in course of time might become pastors of souls and even Apostolic vicars or prefects. The contrary practice was condemned as opposed to the intentions of the Holy See and out of keeping with the spirit of the sacred ministry.

Apostolic vicars and prefects must *apply the holy sacrifice of the Mass* for the people entrusted to them at least on the feasts of Christmas, Epiphany, Easter, Ascension, Pentecost, Corpus Christi, the Immaculate Conception, the Assumption of the B. V. Mary, St. Joseph, SS. Peter and Paul, and All Saints, with due regard to the rules laid down in can. 339, § 2 ff.

They are not allowed, without consulting the Apostolic See, to grant to missionaries sent out by Rome perpetual leave of absence from their vicariate or prefecture, or permission to go elsewhere, or to expel them.

In case a missionary has given public scandal, however, they may, after having heard their counsellors, and, if the culprit is a religious, after serving notice, when possible, upon his superior, remove him at once, and then notify the Apostolic See as soon as possible.

Vicars and prefects, if they have the episcopal character, enjoy the same prerogatives of honor which the law grants to titular bishops; if they are not consecrated

they are entitled, during their tenure of office and in their own territory only, to the insignia and privileges of Apostolic protonotaries *de numero participantium.*

As titular bishops, Apostolic vicars and prefects rank after residential bishops. Their place at councils is expressly defined in the Code.[14]

As to the *protonotarii apostolici de numero participantium,* Pius X (*"Inter multiplices,"* Feb. 25, 1905) has regulated their dress, which is that of regular prelates, with the right of wearing a ring and the faculty of pontificating outside the Eternal City, but only with the *faldistorium* (faldstool) and without the seventh candle. They are not allowed to bless the people when entering a church. They must not say, *"Pax vobis,"* but, *"Dominus vobiscum."* They may wear the pectoral cross only when they pontificate. Their mitre is not the *pretiosa* (studded with gems) but one of gold cloth or silk, and their skull-cap should be made of black silk. They always need the consent of the Ordinary if they wish to celebrate pontifical high Mass.

Vicars and prefects shall, immediately upon entering their territory, appoint a fit clergyman as pro-vicar or pro-prefect, unless the Holy See has already assigned a coadjutor with the right of succession.

The pro-vicar or pro-prefect has no power during the lifetime of the vicar or prefect, beyond that which the latter has committed to him; but in case the vicar or prefect ceases to officiate, or if his jurisdiction is impeded according to can. 429, § 1, the pro-vicar or pro-prefect assumes the government of the vicariate or prefecture and administers it until the Holy See provides otherwise.

A pro-vicar or pro-prefect who has succeeded the

[14] Can. 348 f.

vicar or prefect proper, shall immediately appoint an ecclesiastic to succeed him, if necessary.

Should the appointment of an administrator have been omitted either by the vicar or the pro-vicar, the prefect or the pro-prefect, then the senior of the vicariate or prefecture, *i. e.*, the priest in the territory who has first exhibited the papers of his appointment as missionary, must be looked upon as delegated by the Holy See to assume the reins, or if there are several of equal seniority, the one who has been longest in the priesthood.

Not only Apostolic vicars, but also Apostolic prefects are instructed to appoint pro-prefects, in order to obviate any uncertainty or confusion regarding the government of the territory. The canon makes no distinction between territories with chapters or consultors and such as have neither of these, but merely enjoins that a pro-vicar or pro-prefect shall be appointed by the prefect immediately upon entering his office, or rather his district. The power of pro-vicars and pro-prefects is suspended until the vicars and prefects go out of office.

Those who rule a vicariate or prefecture *ad interim,* according to can. 309, must inform the Apostolic See of the fact as soon as possible. In the meantime they enjoy all the faculties, both ordinary (can. 294) and delegated, which were enjoyed by the vicar or prefect himself, with the exception of such as were granted with sole respect to person.

These faculties are contained in certain formularies issued by the S. C. of the Propaganda.

One who is appointed to an Apostolic vicariate or prefecture for a limited time only, must continue to administer the government with all the faculties granted to him, until his successor has taken canonical possession of the office, even though his own term has expired.

APOSTOLIC ADMINISTRATORS

(CAN. 312-318)

The Sovereign Pontiff, for weighty and special reasons, sometimes entrusts a canonically established diocese, either during the occupancy of its Ordinary or during a vacancy, to an Apostolic administrator, either permanently or for a limited period.

Administrators, sometimes styled *visitatores,* occur in the Decretals of Boniface VIII. They were appointed either by the Roman Pontiff or by the chapter, the synod or the metropolitan, but only those appointed by the Pope had full power.[15] Besides it was customary to allow young nobles to assume the government of a diocese as administrators in temporal, especially princely, affairs. Later it became the exclusive right of the Pope to appoint diocesan administrators. This right was often exercised in times of politico-ecclesiastical troubles, *e. g.,* at Cologne, and, lately, at Genoa. The expedient of appointing an Apostolic administrator is occasionally resorted to when the financial or religious conditions of a diocese are in a precarious state. The administrator is named *in pleno congressu* by the S. C. Consistorialis, and the letters of appointment are dispatched in the form of a bull.

Every Apostolic administrator given to a diocese whilst still occupied by a bishop (*sede plenâ*) enters upon the canonical possession of his administration by presenting the letters of his appointment to the bishop, if the latter is in full possession of his mental faculties and dwells in the diocese, as well as to the chapter, according to can. 334, § 3.

[15] See our *Commentary,* Vol. II, pp. 326 ff.

If the see is vacant, or the bishop is not in full possession of his mental faculties, or if he does not dwell in the diocese, the administrator takes possession like a new bishop, according to can. 334, § 3.

We believe *"mentis consiliique compos"* here means in full possession of one's mental faculties, for it may happen that one can think rationally, but lacks the faculty of memory, or by reason of softening of the brain, has no will power. The so-called *lucida intervalla* must not be taken into account here.

A bishop may dwell outside of his diocese casually, fortuitously, culpably or as an exile. Again, he may be in the diocese, but as a quasi-prisoner. In the latter case it may be said that he has no power of his own (*impos consilii*).

The rights, duties, and privileges of an Apostolic administrator must be deduced from his letter of appointment, or if no special provision is made therein, from the rules laid down in the following canons.

An Apostolic administrator, if appointed permanently, enjoys the same rights and honors and is bound by the same obligations as a residential bishop. If he is appointed for a limited time only he has the rights and duties of a vicar-capitular, but may visit the diocese according to law; he is not obliged to apply the Mass for the people.

As to honorary prerogatives, an Apostolic administrator enjoys those of a titular bishop (see can. 308), or, if he is not a bishop, those of an Apostolic protonotary *de numero participantium*.

A bishop transferred to another see, who retains the administration of his former diocese, enjoys also in the latter all the honorary privileges of a residential bishop.

If an administrator is appointed for a diocese whilst its

bishop is still alive, the jurisdiction of the bishop and of his vicar-general is suspended.

Although the administrator is not subject to the authority of the bishop, he must not meddle in the personal affairs of the bishop, nor try judicially or punish the vicar-general for acts committed under the former administration.

If the jurisdiction of an Apostolic administrator is impeded, or if he fails to take possession, the Holy See must be immediately informed; meanwhile, if the see is vacant or the bishop is not in full command of his faculties, the prescription of can. 429 ff. must be followed; in all other cases the bishop rules the diocese, unless the Apostolic See has decided otherwise.

The jurisdiction of an Apostolic administrator *does not expire* with the death of the Roman Pontiff or the bishop; but it ceases as soon as the bishop of a vacant see has taken legal possession thereof, according to can. 334, § 3.

Under § 1 of this canon the canons or consultors of a diocese cannot proceed to the election of a vicar capitular or administrator while the bishop, whose diocese is ruled by an Apostolic administrator, is alive.

Exemption

It is not our intention to repeat here what we have explained more extensively in our *Commentary*.[16] But it appertains to the subject under discussion to sketch exemption and its origin.

a) The Code, in can. 615, defines exemption as freedom from the jurisdiction of the local Ordinary, except in cases expressed in the law, *i. e.*, in the Code. This privilege is now enjoyed by all *regulars, i. e.*, religious

[16] See Vol. III, pp. 24 ff.

men and women, including novices, who belong to an institute whose members, as a rule, pronounce solemn vows. It also concerns and comprises their houses and churches. Nuns, however, who are not subject to regular prelates, remain under the jurisdiction of the local Ordinary. The Apostolic See alone can grant exemption to religious who are not regulars, as it has done for the Passionists and Redemptorists, and a few others. Bishops may grant exemption from parish organization to religious houses and charitable institutions, provided there be a proportionately just and grave reason.[17]

b) There are synodal enactments which admit of no doubt that exemption was unknown in the first centuries. In the VIIth century we meet with the first example of an exemption granted by Pope Honorius I to Bobbio. Privileges granted by popes and emperors then followed rapidly. The "protection of St. Peter" was sought by, and granted to, religious by the Roman Pontiffs, who were fully aware that the religious orders were a bulwark of the Church in her struggle for freedom against the imperial power. The Mendicant Orders obtained extensive privileges, in fact so many that general discontent arose among the higher and lower clergy. The Councils of Constance, Basle, and the Vth Lateran Council endeavored to restrict these privileges,[18] but with no great success. Besides, there seems to have been an incurable confusion of ideas as to the extent of exemption. Huguccio and the *glossa* to c. I, C. 10, 9 had introduced

[17] Can. 464, § 2.

[18] It sounds queer to regard exemption as the gravest evil of the times and most in need of reform; see Funk, *Manual of Church History*, 1913, II, 77 ff. If the "Fathers" of the Councils and Rome had commenced at their very door, first and above all, and insisted on a more general religious education, exemption would soon have been reduced to its proper limits.

a distinction between the *lex dioecesana* and the *lex iurisdictionis*. The former was supposed to consist in material or temporal rights, such as the cathedraticum, tithes, and certain revenues (*in recipiendo* or *dulcis passio,* as it was called); whereas the *lex iurisdictionis* appears to have comprised the conferring of Sacraments, especially orders, coercive power (*in dando* or *conferendo*). But canonists were at a loss to find an adequate distinction.[19] The Tridentine Council restricted exemption, subjected regulars to the jurisdiction of the Ordinaries, and introduced a new classification of cases, to wit:

1) cases in which regulars were subject to the Ordinary as Ordinary;

2) cases in which they were subject to the Ordinary as delegate of the Apostolic See, and

3) doubtful cases in which they might be subject to the Ordinary as *quasi* or *etiam tanquam* delegate of the Apostolic See.

This caused confusion, which continued till the promulgation of the Code, which has done away with all uncertainty as to exemption.

The Code makes no distinction between delegated and ordinary jurisdiction of bishops over regulars. In the cases mentioned in the Code as falling under the power of the local Ordinary, the latter exercises his ordinary power. And this is quite proper, because, by virtue of the common law, religious are subject to the Ordinary in whose diocese they have their domicile or quasi-domicile, this being the reason which constitutes the *parochus* or *Ordinarius proprius*.[20]

c) There is, however, one distiction still justified, and at least tacitly admitted by the Code. It is that between

[19] Philipps, VII, 1, 60 ff.

[20] Can. 94, § 1.

active and passive exemption,[21] or, as we should prefer to say, between complete and incomplete exemption. Complete or active exemption comprises the superior, his subjects, and the territory in which they live. This exemption is what is called *territorium* or *dioecesis nullius,* and the inhabitants of such a district are exempt by reason of territory, although the exemption may have originally been granted to persons only. We call this exemption *complete,* because where it exists the bishop has no power whatever, the superior of the place being the bishop (can. 215), and those subject to him, either clerics or laymen, are his flock. *Incomplete* or passive exemption is that granted merely by reason of the persons whom a law (or privilege) declares exempt; or, in philosophical terms, this exemption directly (*in recto*) concerns the persons who enjoy the privilege, and only indirectly (*in obliquo*) the houses or churches (not the territory) where they live and pray. This is the exemption accorded by can. 615 to regulars. It must not be conceived as a Chinese wall between the local Ordinary and the exempt religious, because there are many points of contact between both established in the Code. Here is the proper place to explain the laws (can. 319–327) concerning

ABBOTS OR PRELATES NULLIUS[22]

Abbots or prelates who preside over a territory of their own that belongs to no diocese, are called abbots or prelates *nullius, viz.,* of no diocese, according as their church is abbatial or simply prelatial.

An abbey or prelature *nullius* which does not consist of

[21] See Benedict XIV, *De Synodo Dioec.,* I, 4, 3.

[22] See our *Commentary,* Vol. II, pp. 331 ff.

at least three parishes, is ruled by special law, and the following canons do not apply to it.

Abbots and prelates *nullius* are nominated and invested by the Roman Pontiff, with due regard to the right of election or presentation lawfully belonging to another person; in which latter case they are merely confirmed or invested by the Apostolic See.

Those chosen to govern an abbey or prelature *nullius* must have the same qualifications which the law requires for bishops.

As abbots or prelates *nullius* are classed with bishops, it is evident that the Pope is entitled to nominate them. However, the Code does not wish to curtail the acquired rights of others, be they physical or moral persons. The physical person generally is the patron, *e. g.*, the King of Spain concerning Ciudad Real, who *presents* a fit candidate for the vacant office. The right of *election* belongs to an electoral college, which must proceed according to the rules laid down in can. 160–178. However, if the constitutions or statutes of a college or chapter so require, the candidate must have two-thirds of the entire number of votes. On the other hand, any statute or constitution which admits only a relative majority would now have to be discarded. If, for instance, there are forty electors and three candidates, one of whom receives twenty, the second eleven, the third nine votes, the election is null and void. As to the qualifications of candidates, can. 331 must be observed.

Can. 322, § 1 strictly prohibits any interference in the spiritual or temporal government of an abbey or prelature *nullius* by the candidate-elect before he has received the Apostolic letters confirming his election. But suppose the election fell upon the administrator or vicar-capitular,

what then? In that case, as Pius IX has decided,[23] a new administrator should be chosen by the electoral college. Our Code mitigates the Constitution of Pius IX just quoted and inflicts the penalty of suspension from the right of election *ad beneplacitum,* if the electors allow the candidate elected or presented to interfere before he has received the Apostolic letters notifying him of his appointment. One who acts against this law, is declared unable to obtain the prelacy. But can. 334, § 3 permits an administrator who is elected bishop, to continue in the office of administrator.

As to the blessing of abbots or prelates *nullius,* the Code speaks conditionally, *viz.:* if an Apostolic mandate or statute requires the same. Up to a few years ago the Cassinese abbots, three of whom are abbots *nullius,* were never blessed, because being chosen *ad tempus,* for special reasons, they simply took possession of their abbeys after being confirmed. An abbot must be blessed by a bishop, not by an abbot.

We may mention that some abbots seem to have exempted themselves from the duty of visiting the tombs of SS. Peter and Paul at stated times. The Code, following the law laid down by Benedict XIV, enjoins on abbots and prelates *nullius* the same obligations which are incumbent on residential bishops, including the *visitatio ad limina.*

Abbots or prelates *nullius* who are not consecrated bishops, may impart the blessing reserved to bishops, except the pontifical blessing proper; may consecrate chalices, patens, and portable altars with oils blessed by a bishop; grant indulgences of fifty days, and confer tonsure and minor orders. They may also consecrate churches and fixed altars. But they can make use of all

[23] *"Romanus Pontifex,"* Aug. 28, 1873.

these privileges only in case they are blessed by a bishop, if this blessing is required. Concerning the appointment of a vicar-general they must observe can. 366–371.

Abbots and prelates *nullius,* even though not consecrated bishops, enjoy within their own territory the right of wearing the pontifical insignia with throne and canopy, and of celebrating pontifical functions; outside their territory, they may wear the pectoral cross, a ring set with a precious stone, and a violet skullcap.

Concerning other privileges, it appears improbable that the Code should grant them the privileges accorded to bishops in can 349.

During the *vacancy* of an abbey or a prelature belonging to religious, the chapter of religious succeeds in the government, unless the Constitutions provide otherwise. To a vacant secular abbey or prelature the chapter of canons succeeds; however, both chapters are obliged within eight days from the date of receiving notice of the vacancy, to elect a vicar-capitular, according to can. 432 ff., who shall rule the abbey or prelacy until a new abbot or prelate is elected.

If an abbey or prelature is *impedita,* canon 429 must be observed.

If a chapter of an abbacy or prelacy *nullius* belongs to religious, it is governed by the laws and constitutions of the respective religious institute; but if it is a chapter of the secular clergy, canons 391–422 take effect.

For convenience sake we give a list of *cases in which exempt religious are subject to local Ordinaries.*

THE ORDINARY'S POWER OVER EXEMPT RELIGIOUS

1. He may, in urgent cases, settle controversies concerning *precedence;* can. 106, n. 6.

2. Attendance of religious entrusted with the care of souls or endowed with faculties to hear confession at *pastoral conferences;* can. 131, § 3; can. 2377.

3. Apostolic vicars and prefects may compel religious to *undertake the care of souls;* can. 297.

4. Local Ordinaries may perform *pontifical functions* in churches of exempt religious; can. 337, § 1.

5. Bishops may visit exempt *pia loca* and exempt religious in all cases expressed in the law; can. 344.

6. The consent of the local Ordinary is required for the *erection of an exempt religious house;* can. 497, § 1.

7. He has the right and duty to visit monasteries of *exempt nuns,* though subject to regulars concerning enclosure; can. 512, § 2, n. 1; can. 603; can. 2413.

8. He has the right and the duty to *visit* their *churches, sacristies, public oratories,* and *confessionals;* can. 512, § 2, n. 2.

9. He has the right to demand *annual accounts* of all *monasteries of nuns;* can. 535, § 1.

10. To him belongs the *exploratio voluntatis* of postulants and novices of all female orders; can. 552.

11. Exempt religious, too, must obey episcopal orders commanding public prayers or solemnities, ringing the bells (*salvis constitutionibus et privilegiis*); can. 612.

12. Exempt religious are subject to the *penalties for crimes* committed outside the religious house; can. 616.

13. The local Ordinary must *report abuses* to the Apostolic See; can. 617, § 1.

14. *Domus non formatae* are subject to the *correction* of the local Ordinary in case of *abuses;* can. 617, § 2.

15. The local Ordinary is entitled to *bless* abbots; can. 625.

16. Exempt religious also must observe the ordinances concerning the *celebret* or *pastor bonus;* can. 804, § 3.

17. They are subject to the decree of the local Ordinary or diocesan custom concerning *Mass stipends;* can. 831, § 3.

18. They must obtain faculties for *hearing confessions* of all seculars and all female religious from the local Ordinary; can. 874.

19. They are subject to the local Ordinary as to the promulgation of *indulgences;* can. 919, § 1.

20. They are subject to the local, or to the ordaining bishop, with regard to *ordination and examination;* can. 965–967; can. 996 f.

21. They require his permission for *erecting a public oratory* (can. 497, § 2; can. 1162, § 4) and the *consecration* of their churches; can. 1155, § 1.

22. Also concerning the *exposition of the Blessed Sacrament;* can. 1274, § 1;

23. And with regard to the exposition of unusual pictures (*imagines insolitae*); can. 1279, § 1.

24. Concerning the exposition of *relics* an authentic document is required; can. 1283, § 1.

25. Religious must attend the official *Corpus Christi procession* and may hold other processions only with the Ordinary's permission; can. 1291; can. 1293.

26. Concerning *catechetical instructions* and *preaching,* they are also subject to him; can. 1334; can. 1336; can. 1338, § 2; also as to the explanation of the Gospel; can. 1345.

27. The local Ordinary may *preach* in churches of exempt religious; can. 1343, § 1.

28. Exempt religious are obliged to pay the *seminaristicum;* can. 1355 f. (*revocato quocumque privilegio*), and also the *cathedraticum* from their parishes; can. 1504; can. 1507.

29. *Charitable institutes,* even though exempt, must

render an account to the Bishop if demanded by him; can. 1492, § 1.

30. Superioresses are liable to *punishment by the local Ordinary* in case of transgressing can. 549–552; see can. 2412; also in case of disobeying can. 521–523; see can. 2414.

The metropolitan may pontificate and wear the pallium in churches of exempt religious in his territory; can. 274, n. 6; can. 277.

Superiors who actually govern a community of religious who in law go by the name of *regulars,*[24] are exempt from the jurisdiction of the local Ordinary and enjoy ecclesiastical jurisdiction in the *forum internum* as well as *externum.*[25] This same power is accorded by the Code to all superiors of *exempt* clerical institutes, even though their members do not pronounce solemn vows.[26] If not exempt, they have only domestic or dominative power, which refers to the internal and external administration of the institute, but not to any jurisdiction either in the internal or external forum. Hence in whatever concerns external ecclesiastical discipline and sacramental power, especially the confessional, *viz.,* the jurisdiction for absolving from sins and censures, such superiors fall under the common law.

The power of jurisdiction in the external and internal forum, granted to actual—not titular—superiors of exempt clerical institutes, is not territorial, but *personal;* it affects the person of the superiors and their subjects wherever these are. The houses and churches of such exempt clerical religious are affected indirectly. Further-

[24] Can. 488.
[25] Can. 501, § 1.
[26] *Ibid.* and can. 615.

more, this power suffers exceptions, which are mentioned in the law.

Religious superiors of exempt clerical institutes go by the name of *Ordinaries,* but not local Ordinaries. Hence those texts of the Code which either explicitly or equivalently (*e. g.,* by using the term *bishops*) mention "local Ordinaries," do not apply to religious superiors.[27]

The title "Ordinary" is given by the Code [28] only to the *superiores maiores, viz.,* "the abbot primate, the abbot superior of a monastic congregation, the abbot of an independent monastery, even though it forms part of a monastic congregation, the superior general of the whole institute, the provincial superior, their vicars, and all others who have powers equivalent to those of provincials"—provided always, as far as the nomenclature of Ordinary is concerned, that these are superiors of exempt clerical institutes. We reckon also among the "higher" superiors: the guardians, rectors, and conventual (not cloistral) priors.[29]

Lawfully elected *abbots* who actually govern a community and are blessed by the bishop in whose diocese the monastery is located, within three months from the date of election, enjoy the power of conferring the tonsure and minor orders on those subject to them by virtue of the religious (at least temporary) profession, and also the privilege of using pontificals, with the exception of the purple skullcap.[30]

This text needs only a few remarks. As to conferring orders, abbots must follow the Code. Concerning *pon-*

[27] Can. 198.
[28] Can. 488, n. 8.
[29] See our *Commentary,* Vol. III, pp. 120.
[30] Can. 625; cfr. our *Commentary,* Vol. III, pp. 351 ff.

tificals, we refer to former decisions, which we here summarize. But we wish to emphasize that we have no intention to prejudice either a valid privilege or a reasonable custom.

a) The *number* of days on which pontifical functions may be performed is no longer limited, as it was by the decree of Alexander VII, of Sept. 27, 1659. This does not, however, mean that said decree has no longer any value as to other rules contained therein; otherwise the S. Congregation would not so uniformly insist on its observance.

b) Abbots cannot pontificate in other churches than their own, *viz.,* in churches which are *pleno iure* incorporated with their monastery. If they wish to pontificate in other churches, either religious or secular, they need a special papal indult *and* the consent of the local Ordinary.[31]

c) By virtue of a privilege obtained before the Council of Trent (1545–1563), abbots are not allowed to consecrate chalices or bless bells if anointing is to be used. In general, abbots, though permitted to pontificate, are not allowed to bless bells or sacred vessels for which the *unctio* with chrism is required. To do this a special papal indult must be obtained.[32]

d) A bishop may not delegate the blessing (consecration) of bells to one who is not a bishop.[33]

e) Nowhere in these decisions is there any explicit statement that things blessed by abbots without a papal indult, are invalidly blessed.

f) Abbots of regulars may grant permission to other

[31] S. Rit. C., Dec. 18, 1846 (*Dec. Auth.,* n. 2923).

[32] S. Rit. C., June 6, 1626; Aug. 12, 1673; May 16, 1744, ad 1m (*Dec. Auth.,* n. 409, 1486, 2377).

[33] S. Rit. C., April 19, 1687 (*Dec. Auth.,* n. 1781).

abbots of the same order to exercise pontifical functions in their churches.[34]

It may be well to state that Clement XIV (*"Decet,"* of July 23, 1770) granted to the Priors General of the Order of St. Paul the First Hermit the privilege to consecrate sacred utensils and bells for their own churches.[35]

SECTION II

Legislative Powers of Local Ordinaries

After having described various bearers or subjects of jurisdiction, the object of this power may now be explained according to the Code.

Can. 335, § 1 says: *Residential bishops have the right and duty to govern their diocese in spiritual and temporal matters* with legislative, judiciary and coercive power, which, however, must be exercised in accordance with the sacred canons.

Here two principles are stated: the governing power of bishops is (1) locally determined, and (2) objectively circumscribed by the common law. According to this twofold rule bishops must *govern, i. e.,* as St. Thomas says, properly lead those who are to be governed to their appointed end.[36] The object of each individual diocese is the same as that of the universal Church. Therefore, the common law is the rule by which bishops must lead that portion of the faithful that has been entrusted to their care, to the kingdom of Heaven.

In what, then, does the *legislative power* of bishops con-

[34] S. Rit. C., Oct. 1, 1701 (*Dec. Auth.,* n. 2080).

[35] *Continuatio Bull. Rom.,* t. V, 225.

[36] *De Regimine Principum,* 1, c. 14 (ed. Mich. de Maria, S. J., 1886, Selecta Opp., II, 31).

sist? Being the guardians, not the authors, of the common law of the Church, they must watch over its enforcement. They may, furthermore, make new decrees in matters which the common law has overlooked or left undetermined, for in that case an episcopal decree is not against, but beyond the law. Thus, for instance, the common law ordains in a general way that children should be brought to church for baptism as soon as possible. The bishop may determine the precise time. He may also determine more accurately the common law rules concerning clerical dress and conduct. He may abolish customs that are contrary to the common law and proper to his diocese only; although, as Benedict XIV says,[37] he should proceed cautiously in abrogating long-standing practices tolerated by the Church. Bishops, therefore, are bound by the Code (can. 336, § 1) to *urge the observance of ecclesiastical laws.*

I. GENERAL RULES WITH REGARD TO THE CODE

a) The *liturgical laws* of the Latin Church, more especially those concerning the Holy Sacrifice of the Mass, the administration of the Sacraments and sacramentals, as laid down in the rituals, remain intact, unless expressly corrected by the Code.

b) *Concordats* remain untouched.

c) *Privileges* and indults granted by the Holy See remain in force, provided they are still in use and not revoked or expressly recalled by the Code.

d) *Customs* reprobated by the Code must be abolished; those that are not reprobated, but of century long duration and immemorable, may be tolerated if the Ordi-

[37] *De Synodo Dioec.*, XII, 7, 4; XI, 1–3; 10 ff.

nary, with due regard to places and persons, considers that they cannot be prudently abolished; the rest shall be regarded as suppressed, unless the Code expressly provides otherwise.

e) All *laws,* whether universal or particular, that are opposed to the prescriptions of the Code, are abrogated, unless some special provision is made in favor of a particular law. Our Baltimore Councils must be judged according to can. 6, n. 1.

As to *penal laws,* the Code alone is effective.

2. ECCLESIASTICAL AND DIOCESAN LAWS

a) Laws go into effect when they are promulgated. There is a difference between the *promulgation* of general or universal laws, and that of episcopal laws. The former are, as a rule, promulgated by being published in the official *Acta Apostolicae Sedis* (can. 9). *Episcopal* laws, says can. 335, § 2, oblige immediately from the moment of promulgation, unless otherwise provided in their wording. The mode of promulgation for episcopal laws may be decided by the bishop.

b) What the Code says (can. 17–20) concerning the *obligatory* character and interpretation of ecclesiastical laws in general is applicable also to episcopal laws.

c) As to the extension of laws the Code (can. 12-14) enacts that only baptized persons who have attained to the use of reason are bound by ecclesiastical laws.

General laws, *i. e.,* laws given for the universal Church, bind all for whom they are given, everywhere.

Particular laws, *i. e.,* laws given for a particular territory, bind only those for whom they are given and who have a domicile or quasi-domicile in that territory and actually reside therein. This applies to diocesan or epis-

copal laws. However, laws are not to be identified with precepts, which touch the person.

Strangers (*peregrini*) are not obliged to observe the particular laws of their own territory whilst they are absent therefrom, unless the laws are personal. Neither are they bound to observe the particular laws of the territory in which they are sojourning, with the exception of those that concern the public welfare or legal formalities. General laws, however, they must observe, even though these laws are not enforced in their home territory; but they are not bound to observe general laws if these are not binding in the place where they sojourn.

d) A law *ceases to oblige* if it is abrogated, either directly by a contrary law or simple abrogation, or by a contrary custom. But a law does not cease to oblige if the lawgiver goes out of office, *viz.,* when he dies, or resigns, or is transferred. On the other hand, *precepts* given to individuals cease to bind when the lawgiver loses his authority, unless they were imposed by a legal document or in the presence of two witnesses (can. 24). If an incardinated priest is suspended by his bishop *per modum praecepti,* or simply told to stay away from the diocese, this precept ceases to oblige when the bishop is no longer Ordinary of that diocese, unless the precept has been administered as above.

The bishop is the *sole lawgiver* in his diocese. But his legislative activity must be exercised within the limits drawn by the Code. He may not issue laws against the clear enactments of the common law, although he should emphasize the regulations of the Code and may enact laws beyond the Code (*praeter legem*).

The bishop is not the *authentic interpreter* of the Code, but the authentic interpretation of that document is reserved to the supreme lawgiver, his successors, and those

to whom the legislator has entrusted this power, as, *e. g.*, the Pontifical Commission for the Authentic Interpretation of the Code. Bishops may indeed, like any commentator, apply their private interpretation, provided they follow the rules laid down in can. 18–20. But since no law can cover all cases that may come up for decision, the rule is that each case should be decided on the basis of laws given in similar cases, of the general principles of Canon Law based on equity, of the method and practice of the Roman Court, or the common and constant teaching of approved canonists. However, this analogical interpretation is excluded in case of penalties, which must always be interpreted strictly.

The bishop, being the sole author of diocesan laws, is also the sole authentic interpreter of the same. Although the Ordinary is not limited to diocesan synods for giving laws for his diocese, yet the synod is the usual and more solemn means for enacting laws. Here then is the proper place to insert what the Code says concerning

Diocesan Synods
(Can 356–362)

The first diocesan synod or gathering of the clergy of a diocese of which we have knowledge was held by Pope Siricius, about 387, in Rome. The holding of synods soon became customary in the Eternal City, and Innocent III was wont to convoke one twice or three times a week. These were, however, rather forerunners of the consistory, to which foreign bishops were admitted. In the Frankish kingdom diocesan synods were not infrequent in the sixth century, to judge from the seventh canon of the synod of Auxerre, A. D. 578, which set up the rule that in the middle of May all the priests, and on the first

of November all the abbots, should meet annually in the episcopal city. These synods were mixed meetings in which both ecclesiastical and civil matters were debated. The Fourth Lateran Council (1215) ordered synods to be held annually to promulgate the decrees of provincial councils. The same decree, with the addition of disciplinary injunctions concerning the profession of faith and the appointment of synodal judges and examiners, was adopted by the Council of Trent. The pseudo-council of Pistoja, in 1786, adopted certain false propositions concerning the importance and authority of synods and the power of parish priests,—propositions which were condemned by the Church.[88]

1. A diocesan synod should be held *every ten years* reckoning the date from the year 1918, when the Code went into effect.

If a bishop rules two dioceses, either *aeque principaliter* united, or one as administrator only, he may convoke only one synod, in which both dioceses take part.

2. The *subject-matter* to be treated at synods is limited by the Code to the "particular needs and welfare of the clergy and people of the respective diocese." This, of course, does not exclude the right of making provincial decrees known or inserting them in the diocesan enactments.

The synodal proceedings are outlined by Benedict XIV in his classic work *De Synodo Dioecesana:*

(1) Public prayers, allocutions, and sermons;

[88] Pius VI, *"Auctorem fidei,"* Aug. 28, 1794, n. 9–11; see our *Commentary,* Vol. II, 385.—M. Pistocchi, *De Synodo Dioecesana,* 1922, has published a commentary on this subject—but *nihil novi.* We may be permitted to state that almost all the commentaries so far published have offered us little assistance or matter for practical use.

(2) Reading of the decrees and profession of faith (now to be made according to the formula given in the Code);

(3) The election of synodal judges and examiners, and the appointment of diocesan officials;

(4) Statement of cases to be reserved (now no more than three or four) for atrocious crimes;

(5) Determination of the cathedraticum, taxes, stole fees, etc.;

(6) Determination of the alms for Mass stipends and discussion of abuses concerning them;

(7) Rendering of an account for the diocesan seminary.

No. 5 is modified by can. 1507, which strictly prescribes that the *fixing of taxes* for ecclesiastical trials, for the execution of papal rescripts, for stole fees, and for the cathedraticum must be settled by a provincial council or at a meeting of the bishops of the province. Consequently a diocesan statute, for instance, as to the cathedraticum, enacted by the bishop only, would not bind the clergy or beneficiaries. Neither should matters of faith be brought up at the synod, although particular dangers to faith and morals, such as may exist in a diocese, may be discussed and remedies proposed and adopted. Benedict XIV urges as diocesan matter the uniform observance of liturgical laws and the correction of abuses. We might add: pastoral conferences, the administration of church property, and, above all, the inculcation of the laws of the New Code.

3. The *authority that convokes a synod* is the bishop who has been confirmed by Rome and taken possession of his diocese, even though he be not yet consecrated (can. 357). If he is a metropolitan, he may convoke a synod after the reception of the pallium. We say that

he must have taken possession of his diocese, because can. 334, § 2, rules that he is not allowed to take a hand in the government of the diocese before he has formally taken possession. The name of "Ordinary" in this case includes Apostolic administrators, Apostolic vicars, abbots and prelates *nullius,* but not vicars-general without a special commission, or vicars-capitular, who, on the contrary, are entirely excluded because they can have no mandate.

4. As to *place,* it is becoming that the synod be held in the cathedral, as "the mother and head of the other churches," though any good reason suffices for choosing another church. Such a reason would be repairs going on in the cathedral church, or a clerical retreat.

5. Can. 358 determines *who are to be invited to, and must be present at,* the diocesan synod. They are:

a) The *vicar-general,* who has the first place after the bishop;

b) The canons of the cathedral church, or the *diocesan consultors,* who take the place of the cathedral chapter (can. 427); therefore all the consultors must be called.

c) The *rector* of the clerical or theological *seminary.* The term "*saltem maioris*" leaves room for calling the directors of other ecclesiastical institutions of men, such as colleges, high schools, etc.

d) All the *rural deans.*

e) A delegate of each *collegiate chapter.* This delegate is to be elected by the chapter from among its members, according to can. 160-178.

f) The *pastors* of the *city* in which the synod is held; hence, if it is held in the cathedral city, all the pastors of that city; if in another city or town, the pastors or pastor of that city or town.

g) At least *one pastor from each deanery.* He must be elected [39] by those who have actual care of souls, *i. e.,* all those who are called pastors, the administrators of parishes, those who have temporary charge of a parish because of the pastor's absence or disability (can. 473-477); but not the assistants or curates. The pastor who is elected according to the rules laid down for election, must provide a substitute for the time of his absence, according to can. 465, § 4.

h) The governing *abbots* and one of the superiors of each clerical institute in the diocese; this superior must be appointed by the provincial, unless perchance the provincialate is in the diocese and the provincial himself chooses to take part in the synod.

These eight classes of persons must be called to the synod, and if called, they are *obliged* to attend. To make the invitation and will of the bishop more efficacious, canon 359, § 2, gives him the right to proceed against recalcitrants with ecclesiastical penalties. These comprise, besides the privation of active and passive suffrage, excommunications and other penalties, to be inflicted at the good pleasure of the bishop. This procedure affects governing abbots and exempt religious only if they are actually pastors of parishes.

If a lawful impediment, such as sickness, or legitimate absence on a vacation, or urgent business, prevents one

[39] We cannot agree with Pistocchi, *l. c.,* p. 34, when he maintains that a religious (pastor) is ineligible, because he is not a pastor proper, but merely a *vicarius.* He has all the duties and rights of a pastor and is equivalent to a pastor according to can. 451, § 2, n. 2. What would be the consequence of this theory in a vicariate or *abbatia nullius,* where most of the "pastors" are religious? Here the *mind* of the lawgiver should prevail.

who is obliged to be present from attending the synod, he is *not* allowed to send a *proxy,* but must inform the bishop of the impediment.

The Code (can. 358, § 2) permits the bishop to invite to the synod also the canons of the collegiate chapter, the canons of the cathedral chapter of a diocese united with his own, all the pastors and all religious superiors, nay, even all the secular clergy of the diocese, with the exception of as many as are necessary for the care of souls. All these, if invited, enjoy the right of voting, like the others, unless the bishop lays down a different rule. Notice the term *invitati*;—they are merely invited, and hence are free to come or not to come, and the bishop cannot inflict any penalty for non-attendance.

6. The Code (can. 360 and 361) then suggests (it is no command) the *arrangement* of the *discussions* to be followed at the synod.

a) If the bishop deems it opportune, he may, before the beginning of the synod, appoint one or more commissions composed of diocesan priests, to prepare the matter for discussion. Before the sessions begin, the bishop should have a draft of the decrees ready for distribution to those who are present.

b) The questions proposed shall be submitted to the free discussion of all present at the preliminary sessions, presided over by the bishop or his delegate.

7. *The bishop alone is the lawgiver* at a synod, whilst all the other participants have only a consultative vote. He alone signs the synodal decrees, which, if promulgated at the synod itself, bind from that date on, unless otherwise ordained by the bishop either at or after the synod. But it appears to us that the election of examiners is subject to the decisive vote of those present; although we do not deny the right of the bishop to overthrow this vote.

Since the bishop is the sole ruler of the diocese, and is alone endowed with the legislative power *in foro externo*, it is evident that all synodal decrees made in conformity with the common law of the Church need no approbation or signature on the part of the diocesan consultors, the synodal judges, or the rest of the clergy. The clergy, both secular and regular, must, however, carry out the decrees made at a synod. Any other theory would pervert the true idea of hierarchical jurisdiction. At the same time it may be well to call attention to Benedict XIV's rule that nothing should be enacted in a synod which would be detrimental to the privileges of exempt religious, because these are granted by the Supreme Pontiff.[40]

Plenary and Provincial Councils

Bishops or local Ordinaries may also be legislators at plenary or provincial councils, which, therefore, cannot be entirely omitted here. We shall restrict our comments to the most important points.

When Christianity had spread, and diocesan centres were erected, the bishops assembled for deliberation and especially for the uprooting of heresies. This custom soon became an important factor in the life of the Church. Synods or councils, as they were called already in Tertullian's time, were quite frequent in the third, and even more so in the fourth century, and were generally held in times of a crisis, but also for disciplinary purposes. Since the middle of the third century they were known by the name of provincial (exarchal) councils. In Africa, however, plenary or universal councils, presided over by

[40] *De Syn. Dioec.*, IX, 15; Pius VI, *"Auctorem fidei,"* Aug. 28, 1794, n. 9 ff.

the primate of Carthage, were celebrated in the fourth and fifth centuries. Roman or papal synods went by the same name almost to the close of the Middle Ages. The Council of Trent [41] ordered provincial councils to be held every three years for the regulation of morals, the correction of excesses, and the settling of controversies. Notwithstanding this enactment, times were so unfavorable that more than a century elapsed without a provincial council being held, with the exception of one at Tarragona in Spain, until Benedict XIII held a synod at Benevento in 1693. Since then they became more frequent.

In this country the first provincial council was held at Baltimore, in 1829, followed by others in 1833, 1837, 1846, and 1849. In 1852, the first National or Plenary Council was convoked by Archbishop F. P. Kenrick, of Baltimore, in his capacity as Apostolic Delegate of Pius IX. The second followed fourteen years later, and the last one was held in 1884, under the presidency of Archbishop Gibbons of Baltimore as Apostolic Delegate.

1. The Ordinaries of several ecclesiastical provinces may meet in a *plenary council* after having obtained permission from the Roman Pontiff, who will designate a legate to convoke and preside over the council.

Leo XIII, after having received the petition of the South American bishops, left it to them to choose the place of meeting, but was highly pleased with their choice of Rome, where the illustrious prelates met in 1899 and enacted a number of decrees, which received the specific approval of the Holy See.

Those who must attend a plenary council are: the Apostolic legate, the metropolitans, the residential bishops (who may, however, send their coadjutors or

[41] Sess. XXIV, cap. 2, *De Ref.;* see our *Commentary,* Vol. II, pp. 297 ff.

auxiliaries), Apostolic administrators, abbots or prelates *nullius,* Apostolic vicars and prefects, vicars-capitular. Titular bishops may be called, and if called, must attend. All these have a decisive vote. Other clergymen who may be invited have only an advisory vote.

2. *Provincial councils* should be held in each province at least every twenty years.

The metropolitan, or in case he is lawfully prevented or the archiepiscopal see is vacant, the suffragan who is the senior of the province by reason of promotion to the suffragan see, shall select the place for holding the council, after having received the opinion of all those who are obliged to assist thereat with a decisive vote. If there is no serious obstacle, the metropolitan church should be chosen. The metropolitan shall convoke and preside over the council.

The term *"auditis"* signifies that the metropolitan is not bound by the opinion or quasi-vote given, but may choose a place according to his own pleasure.

Bishops who are not subject to a metropolitan, abbots or prelates *nullius,* and archbishops without suffragans, if they have not done so already, may once for all, with the approbation of the Holy See, choose the nearest metropolitan, at whose provincial council they must assist, and the enactments of which they must observe and put into effect.

Those who are to be called and must attend are, besides the metropolitan, the suffragan bishops and those mentioned above, as for the plenary council. All these have a decisive vote.

Besides, two members of the cathedral chapter, or two diocesan consultors must be invited, and if invited, are obliged to be present; but they enjoy only an advisory vote. Such an advisory vote is also accorded to the

higher superiors of exempt clerical institutes and the presidents of monastic congregations who live in the province, and who, if called, must attend or inform the council of the lawful impediment that keeps them away.

Those who are obliged to attend either a plenary or a provincial council, and who have a deliberative vote, shall, if detained, send a procurator with proof that they are legitimately detained. If the procurator is one of the "Fathers" of the Council, he enjoys but one vote; if he is not a "Father," he has a consultive vote only.

The president of either a plenary or a provincial council (the latter with the consent of the "Fathers") shall establish the order in which questions are to be examined, and shall open, transfer, prorogue, and close the council.

Those who are obliged to attend a plenary or provincial council are not allowed to depart, once the council has been opened, unless they have a reason approved by the Apostolic legate or the Fathers of the Council.

Notice the difference between those who are obliged to attend, because they may enjoy only an advisory vote, and the Fathers of the council, who are entitled to a deliberative or decisive vote.

The Fathers of a plenary or provincial council shall earnestly examine and decree upon all matters touching the increase of faith, the control of morals, the correction of abuses, the settling of controversies, the preservation and introduction of uniform discipline, and whatever may be opportune for their particular territory.

Finally, though the canon says nothing about it, the *mode of procedure* at a council is by vote. The vote may be secret or open. This point is to be settled in a preliminary session. The presiding officer has no preponderating voice, even where there is a tie, unless the

papal legate to a plenary council has received special instructions from the Holy See.

After the close of a plenary or provincial council the president of the same shall send all the acts and decrees to the Holy See, and they must not be promulgated until the S. C. of the Council has examined and approved them. The mode of promulgation as well as the date of their going into effect is left to the Fathers of the council.

The decrees of a plenary or provincial council, after being duly promulgated, oblige throughout the whole territory for which they were made, and the Ordinaries of the various dioceses cannot dispense from them except in individual cases and for a just cause.

Unless otherwise provided for by the Apostolic See, the metropolitan, or if he fails to act, the senior suffragan bishop (according to can. 248), should see to it that the Ordinaries of all dioceses meet every five years at a stated time, at the metropolitan's or a fellow bishop's residence, in order to deliberate about the affairs of their dioceses and thus foster the good of religion, as well as to prepare the questions to be treated in a future provincial council.

The bishops and others mentioned in can. 285, together with other Ordinaries, should be called and must attend a conference to appoint the place for the next meeting.

All these regulations are intended to secure a harmonious and uniform proceeding as well as to foster charity.

3. *Customs*
(Can. 25-30)

A community which is capable of having an ecclesiastical law imposed on it, can introduce a custom which may obtain the force of law (can. 26).

a) The *subject,* carrier, or author of a custom, therefore, is a corporation acknowledged as such by the Church. The State cannot create an ecclesiastical corporation, though it may sanction it. The corporation or community must be one which is capable of having a law or statute imposed on it. To this class belong dioceses, provinces, and religious corporations of an autonomous character, for instance, a monastic congregation or monastery of exempt religious. But parishes and deaneries cannot introduce customs, though they may have their peculiar observances.

b) The custom must be *reasonable.* No unreasonable custom is supposed to have the tacit consent of the lawgiver. An *unreasonable* custom is one which is contrary to the divine or the natural law (for instance, divorce), or which contradicts the constitution of the Church, or is subversive of ecclesiastical discipline, or directly reprobated by the Code. Most diocesan laws, unless they are sanctioned by a reprobating clause, admit of a contrary custom.[42]

4. *Rescripts*

Rescripts may justly be referred to particular or special laws, for the Code itself (can. 62) mentions them in this connection. A rescript is a written answer given by the legitimate ecclesiastical superior, either directly, or indirectly through the medium of a competent tribunal, to a question proposed or a favor requested.

1. The *grantor* of such a rescript may be the Apostolic

[42] The Code attaches reprobating clauses to canons 343, § 2; 346; 396, § 2; 403; 409, § 2; 418, § 1; 433, § 1; 455, §1; 460, § 2; 774, § 1; 818; 978, § 3; 1006, § 5; 1041; 1056; 1181; 1356, § 1; 1408; 1492, § 1; 1525, § 1; 1576, § 1.

See, or the Ordinary himself. As to favors and dispensations granted by the *Apostolic See*, note that these are more frequently addressed to the local Ordinaries than to the parties themselves. The Ordinary thus becomes the *executor* of a papal rescript. Therefore he should be aware of the rules governing the office of executor. The Code mentions two kinds of executors, one who acts merely as executor (*executor necessarius*), and one who is a mandatory (*executor voluntarius*).

The general rule for each and every executor is that he acts invalidly if he acts before he has received the official letters and determined their authenticity and integrity, unless he has been previously informed of their contents by authority of the grantor (can. 53).

From this ruling we deduce that no rescript can be validly executed before the papers are, not merely sent off in Rome, but received by the executor. The papers, therefore, must be authentic and integral. *Authenticity* requires that the *stylus curiae* is observed. This is peculiar to each congregation, tribunal, and office of the Roman Court. Thus the nominations which are promulgated in the Consistory are expedited in the form of a Bull.[43] The same holds with regard to the establishment of a diocese or a chapter of canons, or the consolidation of dioceses.[44] Matrimonial dispensations are expedited in the form of briefs, signed by the subsecretary of the S. C. of Sacraments, if they concern an impediment of an inferior degree, or by the Cardinal Prefect or Secretary, if an impediment of a higher degree is involved.[45] The rescript, as a rule, contains (1) the petition together

[43] See Vol. I, p. 14 of our *Commentary*.

[44] *"Sapienti consilio,"* June 29, 1908, *"Normae Peculiares,"* cap. VII, art. II, n. 10 (*A. Ap. S.*, I, 84).

[45] *Ibid.*, art. III, n. 13, 17 (*l. c.*, I, 89 f.).

with the reason for it, (2) the dispositive part or grant of the petition, and (3) date, place, and signature.

These extensive or formal characteristics are common to all rescripts, whether they contain a mere favor or a judiciary decision.

A rescript very often contains *clausulae* which mention certain conditions attached to the grant, either essential or accidental. Conditions made in rescripts, says can. 39, are essential if expressed by the particles *si, dummodo,* or others of the same meaning. Such particles are at the same time indicative of an executor who has (delegated) power to inquire into the existence or verification of the conditions expounded in the petition. For instance, a priest has asked permission to say the votive Mass of the B. V. M. because of poor eyesight. The condition must be verified by the executor if the phrase, *"dummodo res ita se habeat"* is appended.

In case a rescript commissions the executor merely to carry out its terms (*executor necessarius*), he is not allowed to refuse to do so unless it is evident that the rescript is void in consequence of a *subreptio* (failure to state the truth) or *obreptio* (allegation of a falsehood); or the executor is satisfied that the conditions appended to the rescript are not fulfilled; or the petitioner is unworthy of the favor granted. For example: a religious has obtained a rescript of secularization with the clause: *"dummodo episcopum benevolum invenerit."* It may be that a bishop had expressed his willingness to receive him into his diocese, but withdrew his consent before the rescript was signed in Rome. In that case the condition is not verified, and the rescript may (though it must not, the text is not prohibitive) be withheld. Again the religious has conducted himself rather unsatisfactorily pending the grant of secularization. In this case the rescript

need not be executed, but the executor should immediately inform the grantor, *i. e.,* in the example alleged, the S. Congregation of Religious, of the unworthiness of the grantee.

a) If the executor is a *voluntarius,* or as can. 54, § 2 puts it, if the granting of the favor is committed to the executor, the latter may either grant or deny it, according to his prudent judgment, for the executor in this case, by virtue of the rescript, has delegated power from the grantor. The executor may make use of a substitute, unless the wording of the rescript provides otherwise. Besides, a rescript may be executed by the successor in dignity or office of the original executor, unless the latter was appointed on account of personal qualities.

b) The next clause to be observed by executors is that, though the document is not yet in their possession, they may have been *previously informed* of its contents by authority of the grantor. An example: A matrimonial dispensation was executed by the local Ordinary upon having received a cablegram from his agent, but before the papers had arrived. The source through which the telegram was sent was not the authority of the grantor, and therefore a new execution must take place.[46] The authority proper is the Cardinal Prefect, or the Secretary, according to the rules prescribed for these officials with regard to dispensations.

Sometimes rescripts are granted without the agency of an executor. Such rescripts take effect from the date of their signature, or, in canonical language, *a die datae* (can. 38). Does the law requiring that the papers

[46] S. O., Aug. 24, 1892 (*Coll. P. F.,* n. 1810). However, in urgent cases can. 1043, as compared with cans. 204 and 81, will render a new execution superfluous; S. Poenit., Jan. 15, 1894 (*Coll. cit.,* n. 1858).

be in the hands of the executor before he can validly act, apply to the case of one who receives a favor without an executor?—in other words, if the recipient himself is the executor? For instance, an abbot has petitioned for authorization to consecrate a Sisters' chapel. The eve of consecration has come, but no paper from Rome. At the last minute a dispatch arrives from Rome, not from the S. Congregation of Religious, but from the Abbot Primate, saying that the favor was granted. Can the abbot consecrate the chapel? We believe that he can. For, first and above all, can. 53 demands that the papers be in the hands of the executor. In our case no executor is needed: it is a mere favor, and therefore is valid from the date the Cardinal Prefect or the Secretary of the Congregation has put his signature to the rescript. Besides, although a telegram is not the usual way, yet the grantor may choose this means, and hence commission or permit a trustworthy person to communicate the favor by wire. It, therefore, depends upon the trustworthiness of the intermediary, who, in the case stated, is above suspicion. Lastly, since favors must be interpreted broadly, we are not obliged to apply the law (can. 53) which limits executory or mandatory rescripts rigorously to rescripts which contain a mere favor conferred without the aid of an executor.

There is attached to every rescript the implied condition *that the request was founded on truth,* since the grantor must be supposed to be a wise and prudent dispenser of favors which, as a rule, are a breach of the law, and since rescripts are requests, these must have some foundation or be based on reason. Now in rescripts for which no executor is appointed, the conditions upon which the petition is based must be real at the time the rescript is

signed. Thus, if a priest asks for permission to wear a "wig" while celebrating Mass, his head must be destitute of its natural covering at the time the rescript is signed. If the rescript requires an executor, it is valid from the date on which the executor has signed it. Thus, for instance, the transfer of a religious from one house to another must be signed by the religious Superior who is named as executor. In the case of a matrimonial dispensation the reasons for granting it must be verified at the moment when the local Ordinary signs the paper.

However, the reasons for the petition may not always be fully stated (*subreptio*), or it may be that falsehoods have crept into the petition (*obreptio*). The Code says (can. 42) that *subreptio* does not affect the validity of a rescript if it conforms to the style of the Roman Court, that is, if it bears the signature of the proper authority, the reason stated and the *pars dispositiva,* or grant of authority. *Obreptio* does not invalidate the rescript if at least one of several reasons, or the principal reason, is true. Thus in a matrimonial dispensation *angustia loci* may be rather doubtful, but *aetas superadulta* may be a genuine fact.

Errors affecting the name of the person to whom or by whom a rescript is issued, or the place where that person dwells, or the favor itself, do not render a rescript invalid, if the Ordinary is persuaded that no doubt exists as to the identity of the person or the nature of the favor asked for.

2. Since *Ordinaries,* too, may grant favors which are within their competency, *i. e.,* within the ordinary power granted them by the Code or by special faculties, the rules stated for Apostolic rescripts must be applied here also. But it may be well to define the relation of the Ordinary

to the Roman Court, on the one hand, and the relation between bishop and vicar-general on the other. It is thus set forth in the Code (can. 43 f.):

"A favor denied by one Sacred Congregation or Office of the Roman Curia cannot validly be granted by another Congregation or Office, or by the local Ordinary, even though he have the power, except with the consent of the S. Congregation or Office which handled the case first,—with due regard, of course, to the right of the S. Penitentiary in matters of conscience.

"No one shall ask another Ordinary for a favor refused by his own Ordinary without making mention of the refusal; if mention is made, the second Ordinary shall not grant the favor until informed of the reasons for the former Ordinary's refusal.

"A favor denied by the vicar-general and later obtained from the bishop, without mention of the refusal, is invalid; a favor denied by the bishop cannot validly be asked of the vicar-general without the bishop's consent, even if mention of the refusal is made."

The underlying principle of this regulation is that the Roman Curia, as well as the bishop and his vicar-general, form a unit. Two different bishops constitute two separate tribunals, wherefore § 1 of can. 44 does not assert the invalidity of the rescripts, but merely their illicitness, for the purpose mentioned above.

It may happen that a rescript is issued by the Pope or by an Ordinary who goes out of office shortly afterwards, either by death, resignation, or transfer. Does the rescript lose its force by reason of the vacancy of the Holy See or of a diocese? No, says the Code (can. 61), unless the contrary appears from the *clausulae,* or unless the rescript conveys the power of granting a favor to particular persons expressly named therein, and the matter has not yet

taken a legal turn. Generally speaking, the rescripts are addressed to the local Ordinary, and therefore such restrictive clauses or *clausulae* are rare. But the second reason is not infrequent, for it concerns matrimonial dispensations issued for particular persons. What if such a rescript arrives from Rome during the vacancy of the diocese? Is the administrator allowed to execute it? Yes, for the rescript is supposed to contain a dispensation, and, therefore, according to can. 62, the rule stated in can. 66 may be applied: It passes to the one who succeeds the former Ordinary in office. The clause *"et res adhuc integra sit"* means that no summons has as yet been issued (can. 1725). For a rescript containing a matrimonial dispensation may require the summons of the parties or witnesses or persons otherwise interested. This may also apply to a favor which requires investigation, for instance, respecting a private oratory.

3. A word concerning *presentation of rescripts.* The Code (can. 51 and 52) regulates this matter at follows: A rescript which requires no executor must be presented to the Ordinary of the petitioner only in case (a) the presentation is enjoined in the document itself, (b) or there is question of public affairs, or (c) there are conditions that are subject to probation. As a rule, rescripts which concern religious must be presented to their superior, who, in case of exempt clerical religious, is the Ordinary. If the rescript states, *"cum consensu Ordinarii,"* it follows that a religious can neither validly nor licitly make use of the favor granted in the Apostolic rescript without the consent of his superior. If, on the other hand, the rescript contains the clause *"consulto Ordinario,"* or *"audito Ordinario,"* or a similar phrase, the religious may validly (though illicitly) make use of the favor granted without consulting his superior. This we

infer by a perfectly legitimate analogy from can. 105, n. 1. The same holds good with regard to secular priests who obtain a favor with the same clause. As "to public affairs," we may mention: benefices, honorary titles,[47] indulgences,[48] relics, shrines, etc. The last-mentioned kind of favors comprises private oratories and all dispensations which depend on the verification of the alleged facts. As to the *time* within which rescripts must be presented, the law rules that if no definite time is set, a rescript may be exhibited to the executor at any time, provided fraud and deceit are excluded.

5. *Privileges and Faculties*

As we have already stated, privileges and faculties may be contained in rescripts, although a privilege is more frequently granted in the more solemn form of a Constitution, or Brief, or *Motu proprio.* A privilege granted by *Motu proprio* has this peculiarity that it is valid even if subreptitious, unless the final reason, provided it be the only one, is false. However, though granted *Motu proprio,* a rescript is of no effect if given to a person incapable of receiving the favor granted under the common law, or against the lawful custom or particular statute of the place, or against the acquired right of another person (can. 45 f.). Those incapable by law of receiving papal favors are persons excommunicated or suspended after a condemnatory or declaratory sentence, or personally interdicted.[49] Local customs and peculiar statutes are safe-

[47] Lately we were startled by grants of monsignorships to religious; can. 515 seems to be a dead letter.

[48] The faculty of erecting the Stations of the Cross must always be shown to the Ordinary; S. C. Indulg., Feb. 5, 1841.

[49] Can. 2265, § 2; can. 2275, n. 3.—Protestants, as such, are not under sentence of excommunication; can. 2283.

guarded because the supreme lawgiver is not supposed to know them, nor to be willing to contravene them.

As to privileges, or more or less permanent concessions against or beyond the law, the Code does not demand that exempt religious "show" their privileges to the local Ordinary, except in the case of those granted *orally*. These may, indeed, be used by the grantee in the court of conscience, but cannot be asserted against others in the external forum, unless the grantee can prove that he has legitimately obtained them. If a privilege orally granted by the Sovereign Pontiff was afterwards verified or testified to by a Cardinal, the proof is full.[50] The Code (can. 78) expressly calls upon Ordinaries to inform the Holy See when privileges granted by the Apostolic See are abused by the grantees. It would be an abuse if exempt religious claimed more for exemption than it implies, or if they refused obedience in cases where they owe it under the law, or if they attempted to extend exemption to affiliated Sisters. In all such cases the local Ordinary would certainly be entitled to examine the respective privilege, because *"habet intentionem fundatam in iure,"* in plain English, he has a priority of rights.

Faculties and Indults

The Code (can. 66) under the general title of privileges mentions also the so-called faculties, *i. e.*,[51] certain rights denied by common law, but granted by special privilege. It follows from the nature of a faculty that it can be given only by one who has the power to modify

[50] Can. 239, § 1, n. 17.

[51] *Facultas* implies power or right, in the subjective sense, and its bearer here is the Ordinary, not as such, but as delegate of the Roman Pontiff.

the common law. This one is primarily the Pope, though bishops also may grant faculties concerning matters subject to their legislation. Since the XVIth century special faculties were granted, chiefly to the German bishops, classified in certain formularies, as *pro foro externo* and *pro foro interno,* as *quinquennales* and *triennales,* and for a determined number of cases. The latest grant (Formulary III) was forwarded by Card. de Lai, Secretary of the S. C. of the Consistory, on March 17th, 1922, to all the "Ordinaries of America, Russia, and Other Places outside of Europe." These faculties are intended as quinquennial. The Code (*l. c.*) provides:

1. That habitual faculties granted forever, or for a limited time, or for a definite number of cases, are privileges beyond the law; and that

2. Unless they were conceded for personal reasons, or unless the law provides otherwise, habitual faculties do not expire with the authority of the Ordinary (or others; see can. 198, § 1) to whom they have been granted by the Apostolic See, even though he may have begun to execute them, but pass over to those who succeed him in office. Faculties granted to the Bishop are intended also for the vicar-general.

3. A faculty implies all the powers necessary for its exercise; hence the faculty of dispensing includes the faculty of absolving from censures, if necessary, but only for the purpose of receiving the dispensation. This may be thus explained:

(1) Habitual faculties are those which are commonly granted to bishops, either for a certain time or for a limited number of cases, and are, as it were, concomitants of the episcopal office. As they are numbered among the *privileges,* the rules of interpreting privileges must be applied to them, *ceteris paribus.*

(2) These habitual faculties do not expire with the cessation of the Ordinary's term of office, but continue in his successors, and the faculties granted to the bishop are also given to the vicar-general, unless the bishop (or others to whom the faculties were given) was selected for this honor on account of personal qualities. The name "Ordinary" is applied to diocesan bishops, each for his territory, to abbots *nullius,* and to the vicars-general of both, to Apostolic vicars and prefects, and to the superiors of exempt religious. The successor of the Ordidinary to whom a faculty was granted, may complete the execution thereof which the predecessor had begun, *e. g.,* by calling witnesses, issuing summonses, etc.

(3) A faculty, if given, grants the use of all the means necessary for its application, and hence the faculty of dispensing includes the power of absolving from censures, when necessary; but only for the purpose of rendering the subject capable of receiving the dispensation. Therefore, *e. g.,* an excommunication or suspension or personal interdict is, *de facto,* suspended only here and now, whilst conditions added to the censures for the case of real absolution remain.

What are *indults*? The Code (can. 4) distinguishes them from privileges and rights otherwise acquired. However, the fact is that a canonical microscope is needed to perceive any great difference between them. The Roman law mentions favors granted by the Emperor as the supreme lawgiver.[52] The old collections apply the same meaning and identify *indulgentia* with *privilegium.*[53] The Council of Trent speaks of *privilegia seu indulta.*[54] The indults given to our country have different names.

[52] L. 1, Cod. Theod., III, 10; l. 1, *ibid.,* IV, 15; l. 15, *ibid.,* XV, 2.
[53] Cc. 17, 19, X, V, 33; c. 21, X, V, 40.
[54] Sess. VI, cap. 2, *De Ref.; Kirchenlexicon,* ed. 2, VI, 698.

Thus the one for the extension of the Easter season is called *facultas;*[55] the fast and abstinence indults are styled by the S. Congregation dispensation and faculty of dispensation.[56] From this it may reasonably be inferred that there is no essential difference between indult, privilege, faculty, and dispensation. If one would stress the duration of time, he might find a plausible distinction for certain kinds of indults, but not for all. However, there is no doubt that privileges involve a more or less permanent grant, whereas indults are generally granted only for a certain time or for certain cases. Besides, privileges, being special laws, as a rule comprise a particular class of persons, whereas indults are given to individuals and as particular laws, *i. e.,* for certain countries. Thus, for instance, the extension of the Easter season was inserted as a particular law in the decrees of the Second Plenary Council of Baltimore.[57]

Use of Privileges and Faculties

Privileges, faculties, and indults, as stated above, indicate a favor beyond or against the law. In order to make proper use of them it is, above all, necessary to *interpret* them according to the will of the lawgiver. Besides the general rules of interpretation there are two which especially apply to privileges:

(a) A privilege must be interpreted according to its wording, and must be neither extended nor restricted (can. 67). An *extension* would take place if the privilege were applied to persons not intended by the grantor, for in-

[55] S. C. P. F., Oct. 16, 1830 (*Coll. Lac.,* III, 36).

[56] S. C. P. F., Sept. 2, 1837 (*Ibid.,* III, 60 f.).

[57] Tit. V, cap. IV, n. 257 (*Coll.,* III, 464). The subsequent clause wishes to see this condition reduced to normal times.

stance, to lay persons if intended for clerics, or if it were applied to cases different from the one intended, for instance, consanguinity in the second degree mixed with the first degree to that of consanguinity of the first degree purely and solely. *A restriction* is effected if a favor not specifically or numerically determined in the grant is limited to a certain category or number. Take, for instance, the faculty granted by the S. Rit. C. (Formulary III, n. 9) concerning the use of incense at a *Missa Cantata* without ministers. There would be a restriction if the bishop allowed it only on Sundays or holydays of obligation, and a specific limitation, if he would allow alienation to the amount of $10,000 only for first mortgages, excluding perfectly good, though unsecured personal notes.

(b) In case of *doubt* privileges must be interpreted like rescripts, but in such a way that the recipient always retains some proof of the good will of the grantor (can. 68). As to rescripts, the Code rules (can. 50) that, in case of doubt, rescripts which pertain to disputes or trench on the acquired rights of others, or reverse the law in favor of private parties, or, finally, rescripts which were given for the attainment of an ecclesiastical benefice, demand a strict interpretation; all others may be interpreted broadly.

Concerning the use of privileges, the following rules, partly taken from the Code and partly from former practice, may be mentioned:

No one is obliged to make use of a privilege which has been granted to him solely for his own benefit, unless an obligation to that effect should arise from another source (can. 60). The first clause of this section refers to personal privileges, such as those mentioned in can. 239 and can. 349 with regard to cardinals and bishops, concerning

some of which it has been clearly stated that they cannot be habitually delegated.

May *faculties* be subdelegated? We refer to Formulary III of March 17, 1922. This question may be answered from various points of view: fact, right, and extent of communication.

a) Note first, that no communication is needed with regard to the *vicar-general,* as can. 66, § 2, says: "Faculties granted to the bishop are intended also for the vicar-general." The Code says nothing concerning the diocesan *chancellor.* By virtue of can. 199, § 2, the bishop could validly and licitly communicate these faculties to his chancellor or to another priest; but it appears contrary to the intention of the Code to admit more than one vicar-general (can. 366, §3), which would practically be the case if these faculties would be given to the chancellor. Unity of government and the authority of the vicar-general might suffer unnecessarily from such a procedure.

b) A bishop *may,* but is not obliged to, communicate to other priests such faculties as are communicable. Often it is necessary, or at least useful, to communicate them, since the bishop cannot do everything himself.[58] But if he communicates them, the bishop cannot restrict or extend them arbitrarily, or add new conditions or clauses to the faculties which are not expressed in the original text, but must communicate them *tales quales, i. e.,* just as they were granted by Rome. Therefore it is safest either to show the original text or to have an accurate copy made of it.[59]

c) As regards the *extent* or number of the faculties to be communicated to others, it is safe to say that the

[58] Benedict XIV, *"Apostolicum ministerium,"* May 30, 1753, § 11; cfr. Putzer, *Comment. in Facult. Apost.,* ed. 4, p. 45, n. 34.

[59] S. C. P. F., March 16, 1865 (*Coll. P. F.,* n. 1270).

rules of subdelegation, according to can. 199 may be followed, unless a contrary clause or the matter itself should forbid or restrict subdelegation totally or partially. Besides, those faculties which commence with the words *"Facultas"* are not intended to be habitually granted, except perhaps IV, n. 7, from the Congregation of Religious. On the other hand, those which commence with *"deputandi," "benedicendi," "permittendi," "celebrandi," "absolvendi,"* may be committed habitually. Thus there is no doubt that the faculties from the S. Poenitentiaria may be habitually communicated to others. Much more is this true of faculties to which the text itself adds: *"cum potestate subdelegandi."*

The local Ordinary is not obliged to grant faculties to all priests alike; on the contrary, he should ascertain the fitness of the priest to whom he wishes to grant faculties, and may withdraw them entirely or partially from a priest who has made a bad or imprudent use of them. However, Benedict XIV says the Ordinary should be very cautious and kind when faculties are to be suspended or withdrawn.[60] In general, he should weigh the fitness of the priests, the need of the souls entrusted to their care, and the frequency of the cases that may occur, especially in view of distances and the extent of the diocese. The same rule may be applied proportionately to the so-called episcopal cases, *i. e.,* cases reserved to the bishop.

Loss of Privileges

Unless the contrary is evident, privileges are perpetual (can. 70), and hence a special act of the grantor is required to recall them. This act may be either explicit or implicit.

[60] *"Apostolicum ministerium," l. c.;* Putzer, *l c.,* p. 46.

a) An *explicit* act of revocation is either general or particular. Thus the legislator may, by the *explicit* act of promulgating a contrary general law, abolish privileges contained in the law or the Code. In this case, and in this case only, the privileges granted by law are abrogated (can. 71). Hence indults or privileges which contain favors beyond or against the Code, and not contained in the Code itself, are not repealed by the promulgation of the Code, as the legislator expressly states (can. 4).

To repeal privileges not contained in the Code a *particular* and explicit manifestation of the grantor's will is required. Therefore, such a privilege, like a rescript, is revoked only by a special act of the superior, which must be duly intimated to the grantee (can. 60, 71). Thus faculties and indults, prescinding from their character of temporary grants (triennial, quinquennial), are not recalled by the promulgation. However, an exception must be made to a general revocation, *viz.*, if the law itself revokes the privilege. This is done by the insertion of a clause which in the Code is expressed by the words, *"revocato quocunque privilegio";* for instance, certain privileges limit the rights of bishops.[61] Besides, if an Ordinary has granted a privilege which he could grant by virtue of his ordinary power, it may be revoked by a law issued by the supreme power (can. 60, § 2). Thus, *e. g.,* he may allow bination by reason of can. 824, § 2, but if the Apostolic See would issue a law abolishing this power, the grant of bination would be void.

An explicit revocation is also contained in certain clauses attached to privileges or indults. Thus *"ad beneplacitum nostrum,"* or *"durante officio,"* or *"durante pon-*

[61] Can. 343, § 2; 403; 460, § 2; 519; 544, § 2; 654; 774, § 1; 876, § 1; 964, nn. 1, 4; 1157; 1267; 1356, § 1; 1576, § 1.

tificatu" mean that a privilege or indult lasts as long as the grantor is in power. Otherwise privileges continue even after the grantor has gone out of office (can. 73).

b) *Implied* acts abolishing privileges or indults. Thus real privileges, *i. e.,* such as are attached to things (for instance, a shrine, a chapel, a devotional article), cease upon the complete destruction of the thing or place, but local privileges revive if the place is restored within fifty years (can. 75).

A privilege may be lost by *contrary prescription,* just as it may be acquired by prescription (can. 63, can. 76), provided, of course, that the thing or right is liable to prescription.[62]

A privilege also ceases if in course of time conditions change to such a degree that, in the judgment of the superior, the privilege becomes harmful, or its use illicit; or if the time for which the privilege has been granted expires, or the number of cases for which it was given is full; without detriment, however, to canon 207, §2.

Can. 207, § 2 refers to delegated power for the internal forum, and states that an act performed by inadvertence or oversight is not invalid, even though the number of cases for which the faculty was granted has been overstepped, or the time for which the indult was given has elapsed. Thus the faculties granted by the S. Poenitentiaria in Formulary III fall under the ruling of can. 77 and can. 207, § 2. Can. 209 says that the *Church supplies* the necessary jurisdiction, in the internal as well as external forum, in cases of a common error and in cases of probable positive doubt, either of fact or law.

By non-use, or contrary use, a privilege which is not injurious to others does not cease; but a privilege that is

[62] Can. 1509 states what is not subject to prescription.

burdensome to others loses its force by legitimate prescription or tacit renunciation.

Whoever abuses the power granted to him by a privilege deserves to be deprived of the privilege itself; and the Ordinary shall not fail to notify the Apostolic See if anyone grievously abuses a privilege granted to him by that See.

6. *Dispensations*

What Abbot of Fleury (d. 1004) said of dispensations, *i. e.,* that they are relaxations of the law in particular cases, is still the guiding principle in granting them. He wrote: "We must take into consideration the situation of countries, the character of the times, the frailty of men, and other reasons which of necessity change the laws of different provinces. The same is true concerning papal decrees, which are of such authority that many judges expect the verdict of the Roman Pontiff. In these things, therefore, utility and equity (*utilitas et honestas*) must prevail, but not the enticing enjoyment of desires."[63] The same idea recurs in the prologue to the *Decretum* of Yvo of Chartres (d. 1115). He reduces the reasons for granting dispensations to two—utility and necessity, and compares the Church to a crew who throw merchandise overboard in order to save the ship.[64] Gratian went no farther, for all his texts are taken from Yvo.

The Code briefly states who may grant dispensations, determines the power of the Ordinaries and pastors, states the causes for dispensations and how they must be interpreted.

[63] *Collectio Canonum,* c. VIII (Migne, 139, 483).
[64] *Proleg. in Decretum* (Migne, 161, 47 ff.).

1. Dispensation presupposes or is, so to speak, coextensive with, legislative power. Therefore the *Pope* can dispense in all matters subject to his legislation, that is to say, in ecclesiastical, but not in divine, laws. The same power is vested in his *successor,* because he is his equal, and "*par in parem non habet imperium.*" But the Pope can also dispense from episcopal laws, for he is superior to the bishops. On the other hand, a *bishop* may dispense from papal laws only if he has received the necessary faculties from the Apostolic See. The same applies to *superiors* of exempt religious orders.

The Pope is not bound by the existence or validity of reasons, but can dispense validly without reason, although it is not to be presumed that he would proceed thus, since a dispensation is "a sore on the law," and should not be used for destruction. This is not the case with those who are inferior to the Pope, hence canon 81 establishes the power of those *inferior* to the *Roman Pontiff.*

2. As to the power of the *Ordinaries,* it must logically be held:

(a) that they cannot dispense, even in particular cases, from the *general laws* of the Church, because Ordinaries are not the givers of general Church laws; but

(b) they may receive the power of dispensing from general laws, either explicitly or implicitly. That power is granted *explicitly, e. g.,* in can. 806, § 1, concerning bination, which is now an ordinary power, because the law itself confers it on the local Ordinaries (exclusive of others who are not local Ordinaries). Explicitly the power of dispensing from general laws is given by faculties, indults or rescripts. It may, moreover, be *implied* by an office to which the power of dispensing is attached. Thus the office of cardinal conveys the priv-

ileges of absolving from all censures except the four most especially reserved.

(c) Ordinaries may also dispense from general laws in cases

1.° in which recourse to the Holy See, *viz.,* to one of the S. Congregations or tribunals, is difficult;

2.° when there is grave danger in delay, and

3.° when the dispensation requested is one which the Holy See is wont to grant. These conditions may concur in matrimonial cases and in irregularities arising from hidden defects or crimes. *Recourse to the Holy See* here means ordinary recourse, *i. e.,* by mail, not by telegraph, which is an extraordinary means of communication. A *grave danger* is present when escape is almost, not entirely, impossible, and hence it is not necessary that it be a *casus fortuitus,* or unforeseen accident. How grave the danger must be, cannot be determined by a general rule; but scandal or injury of reputation would suffice to constitute a serious danger. Finally, the case must be one from which the *Holy See* is *wont to dispense,* for nothing is included in the general concession which the superior is not likely to grant. Hence, whatever is rare, extraordinary, unusual, or difficult to obtain from the Holy See, does not come within the sphere of episcopal power, for instance, irregularities *in defectu corporis enormi.* This is the viewpoint which the Ordinaries—and religious superiors also, for the canon does not add "*loci*" or "*locorum*"—must take in relation to the common law as contained in the Code.

Bishops and other local Ordinaries may dispense from *diocesan laws,* because here they are the legislators. They may also dispense from the laws of *provincial and plenary councils,* but only in particular cases and for a just reason.

Particular here refers to individuals and specified or determined places or parishes.

Bishops and other local Ordinaries cannot dispense from particular laws given by the Holy See for that particular territory; for instance, from the law governing the nomination of candidates for vacant sees in the United States (S. C. Cons., July 25, 1916), or, we believe, from the law regarding holydays.

Parish priests cannot dispense either from a general or from a particular law, unless they have expressly received that power, as, for instance, through can. 1044 and can. 1245, § 1 of the Code. But they have no such power concerning the banns of marriage.

3. Concerning the causes or *reasons* for dispensation the Code (can. 84) rules as follows:

"No dispensation from an ecclesiastical law is to be granted without a just and reasonable cause, and due regard must always be had to the importance of the law from which the dispensation is given; otherwise the dispensation given by an inferior is illicit and invalid. When there is doubt as to the sufficiency of the cause, a dispensation may be lawfully asked for, and licitly and validly granted."

The *cause* may be the motive or impelling reason, the former being the *raison d'être* of the dispensation, the latter only an aid, or, as the Scholastics were wont to express it, the motive cause is *"ad esse simpliciter,"* the impelling cause *"ad facilius esse."* Here the *causa* must be understood as the *motive* cause.

Concerning the *time* when the *causa* must be verified, we refer to can. 41, *De Rescriptis*: If no executor is appointed, the cause must exist at the time when the dispensation is granted; if an executor handles the dispen-

sation, the cause must be verified at the moment when he affixes his signature.

As to the *nature* of the cause, the Code says that it must be *just and reasonable*. Justice refers to law, which admits certain causes and rejects others. Thus a list of canonical causes is set up, *e. g.,* for matrimonial dispensations. The cause must be reasonable because, as law pertains to reason, so also must a dispensation partake of reason. The judgment as to the latter quality lies with the grantor.

Furthermore, there must be due *proportion* between the seriousness or importance of the law and the dispensation, which is a *vulnus legis*. Hence for relaxing a serious law a serious and solid reason must be advanced; a graver cause is required to dispense from a major than from a minor impediment.

Besides, it is but just that the persons for whom a dispensation is issued, should be considered, because influential persons are more important for the public welfare than ordinary mortals.

Lastly, the *circumstances* must be considered, not only of persons, but also of consequences which might probably follow, *e. g.,* scandal, damage, injury, etc. If the reason alleged is not just and reasonable, the dispensation granted by an inferior is illicit and invalid.

4. As to *interpretation,* the rules given with regard to rescripts apply also to dispensations, *i. e.,* they, as well as the faculty of dispensing granted for certain cases, are subject to *strict interpretation,* without extension or restriction. The Code says: "A dispensation which permits of successive application ceases the same way as privileges, and with the certain and complete cessation of the motive cause."

What has been said concerning the manner in which

privileges cease, must be applied here also, because habitual faculties are *privileges beyond the law* (can. 66, § 1), and hence cease by renunciation, repeal, or the death of the grantor, if there is a clause that says so, otherwise not. To ask whether a dispensation can be lost by contrary usage and prescription seems, at first sight at least, silly. Yet a dispensation which permits of successive application (*tractum successivum*), *e. g.,* eating flesh-meat, saying a "black Mass," etc., is not exhausted by one act, and may therefore be forfeited if contrary usage and an imperative act of the superior combine. The Code says that such dispensations lose their force in the same way as privileges, and hence we must apply that disposition of the law also to the case in hand.

The Code finally provides that, if the motive cause ceases entirely and for certain, the dispensation also ceases. The two conditions ("entirely and for certain") must be taken conjointly. For instance, if one has received a dispensation from the vow of chastity *ad usum matrimonii* on account of temptations, he may continue the use of marriage even after the cessation of these temptations, because there is no certainty. But if a cleric has obtained a dispensation from reciting the Breviary on account of weak eyes, he cannot continue the use of the dispensation after his eyesight has been completely restored.

SECTION III

Administrative Powers

Bishops, for various reasons, need helpers in the government and administration of their dioceses. These helpers may or may not be endowed with the episcopal

character. If so, they are called coadjutors or auxiliaries.[65] If not bishops, they constitute what is properly called the diocesan court, a reproduction, on a smaller scale, of the Roman Curia.

COADJUTORS

1. Since the XIIIth century the Roman Pontiff exclusively *appoints* episcopal coadjutors. This is rarely done in such a way that a coadjutor is attached to the see, so that the successor of the deceased bishop has the same coadjutor as his predecessor. The Code calls such a coadjutor *datus sedi*. There must be particular reasons for making an appointment in this way. The more usual way is to appoint a coadjutor to the person of the bishop and with the right to succession (*datus personae Episcopi cum iure successionis*). If the right to succession is excluded, the coadjutor goes by the name of auxiliary.

2. The *rights* of "a coadjutor given to the person of the bishop" depend on his letters of appointment. If the bishop is entirely disabled, the coadjutor assumes all his episcopal rights and duties, unless the letters of appointment provide otherwise. If the bishop is not entirely disabled, the coadjutor may exercise as much of the episcopal power as the bishop entrusts to him. However, the Code rules that the *coadiutus* should not habitually delegate to others what his coadjutor can and is willing to do. The reason is evident. It would be an insult to the Holy See and a slur on the coadjutor

[65] As to the history see above. These bishops were called *episcopi titulares, annulares, nullatenses, auxiliares, suffraganei, vicarii in pontificalibus.*

if a third party were habitually called into the diocese to perform episcopal functions. *Per modum actus,* or for special reasons, another may be asked or admitted. Unless lawfully prevented, a coadjutor must perform the pontifical and other functions as often as he is requested by the bishop who would otherwise have to perform them. What we said above concerning the use of the throne, applies here also.

A coadjutor bishop attached to the see (*sedi datus*) may exercise acts of episcopal power, with the exception of ordination to holy orders, in his own territory; other powers may be exercised in conformity with the will of the Holy See and the *coadiutus.*

To take canonical possession of his office, the coadjutor must *present the letters* of appointment to his bishop and chapter. In our country a coadjutor with the right of succession must present his papers of appointment to the assembled consultors. To the bishop the coadjutor need show the Apostolic letters only if the former is mentally and physically able to perform human acts, *i. e.,* if he can realize the meaning of the ceremony.

3. The *obligation of residence* is incumbent on coadjutors just as on residential bishops. But, besides the vacation granted by can. 338, they may occasionally absent themselves from the diocese "for a short time" with the permission of the bishop. What "*breve tempus*" means has not been determined, but we may interpret it as about a week. In the vacation period and brief absences are not included attendance at an ecclesiastical council and the *visitatio liminum.* For these the permission of the bishop may be presumed.

4. The *cessation* of a coadjutorship is determined as follows:

a) A *coadjutor bishop with the right of succession* becomes Ordinary of the see at the moment the bishop dies or goes out of office;

b) With the office of the bishop expires that of his *cuxiliary,* unless otherwise provided for in the Apostolic letters;

c) If the coadjutor was *given to the see,* his office continues during the vacancy of the diocese.

THE DIOCESAN COURT

The diocesan court consists of those persons who assist the bishop or his representative in the government of the whole diocese. It is made up of the vicar-general, the *officialis,* the chancellor, the *promotor iustitiae* (or diocesan attorney), the defender of the marriage bond, the synodal judges and examiners, the parish consultors, auditors, notaries, couriers, and beadles.

The *officialis,* who holds the first place after the vicar-general and must be chosen by the bishop (can. 1573, § 1), is a functionary distinct from the vicar-general.

The appointment of all these officials must be made in writing; but before entering upon their respective offices they (1) are bound to take an oath into the hands of the bishop that they will discharge their duties faithfully and without human respect; (2) and when performing their duties, they must do so under the supervision of the bishop, according to the norms laid down in the following canons. Besides, they are strictly bound to secrecy within the limits and to the extent set by law or by the bishop.

The secret they are obliged to keep is called official; it attaches to their office and hence might also be styled, with a legal term, "privileged knowledge," *i. e.,* knowl-

edge the manifestation of which cannot be legally exacted. The obligation arising from this secret is based upon the natural law, but its measure and extent may be determined by positive norms, which are as broad as the matter involved and as wide as the necessity of the office, which is subject to the law and the will of the superior. Therefore, if a higher or more stringent reason, *e. g.,* the public welfare or a superior command, should demand of these officials the revealing of a secret, they would have to obey. On the other hand, they are never allowed to reveal anything to persons who are not involved or interested, and even to parties interested they cannot communicate anything which would be detrimental to another, unless they are legally called upon to do so by reason of their office.

THE VICAR-GENERAL [66]

The historical development of this office proceeded by slow degrees, until it assumed its present status. Not all countries show the same process of evolution, and hence it is dangerous to generalize. The former office of *archdeacon,* to some extent, resembled that of the vicar-general. In Rome as well as in other large cities, one of the deacons was called archdeacon, a title already given to St. Lawrence. The office was closely connected with temporal affairs. The archdeacons grew in importance as the *chorepiscopi* decreased. Since the IXth century there was more than one archdeacon, especially in the larger dioceses, and they gradually seem to have absorbed the powers of the archpriest, which were limited to baptism and other spiritual matters. The archdeacons often acted against the bishop's wishes, and consequently

[66] See our *Commentary,* Vol. II, pp. 393 ff.

the bishops endeavored to restrict the archdeacons' power. That their power was ordinary, without a mandate or delegation from the bishop, is nowhere stated in the Decretals of Gregory IX, although this has been asserted. The Decretals call him vicar of the bishop, attribute to him the supervision and correction of the clergy, care of the sacred vestments, the office of master of ceremonies, and the visitation of the diocese. But without a special mandate of the bishop archdeacons could not appoint parish priests or pronounce excommunication, although they could hear the quarrels of individuals. Soon after the period of the Gregorian Decretals appears an *officialis,* who may be identified with the present vicar-general. Innocent IV in the *Liber Sextus* (A. D. 1250) laid down rules for this official. His power is not, at least to its full extent, ordinary, otherwise procedure and appointment to benefices would not be excepted therefrom. The bishops meanwhile continued their opposition to the archdeacons by appointing *officiales foranei* (rural deans), who with the permission of the bishop exercised a certain jurisdiction in their districts, but were removable *ad nutum.* In England there arose a distinction between the vicar-general, to whom the administration or voluntary jurisdiction was entrusted, and the *officialis,* who had contentious or criminal jurisdiction. The Council of Trent paid no heed to this distinction, but further curtailed the powers of the archdeacon, who subsequently became an appendage of the cathedral chapter with merely honorary rights, whilst the vicar-general became more important. In the new Code the *officialis* of former times reappears (can 1573).

The *appointment of a vicar-general* is one of the free and uncontested rights of the bishop, and in exercising it he is not bound by the consent or advice of his chapter

or consultors, much less by insinuations or pressure on the part of the civil government, unless the latter has definite privileges under a concordat.

The bishop can exercise the right of appointing a vicar-general only after the papal nomination or provision has been received.

The *removal of a vicar-general* depends entirely on the good pleasure of the bishop, who may take the office away, with or without reason, and without any formality, summary or solemn procedure.

There should be but one vicar-general except in dioceses where diversity of rites or territorial extent make it advisable to have several. Innocent III decreed that a bishop should select several vicars for diverse rites and languages. Such vicars resemble auxiliary bishops, who would be able to celebrate the sacred mysteries in the respective rites, whilst the Code speaks of vicars-general only and does not mention diversity of language. The second reason for having several vicars-general is *"amplitudo dioeceseos." Amplitudo* means extension as well as greatness or number of parishes and souls. On that score the metropolitans of most of our American archdioceses may safely appoint several vicars-general, who, *per concomitantiam,* may divide their labors according to linguistic denominations. If a bishop governs two dioceses, either as two sees with equal rights (*aeque principaliter unitae*), or one as his proper see and the other as administrator, he may appoint two vicars-general, one for each diocese, if this should be found more expedient or perhaps necessary for proper administration.

The Code (can. 367) determines the *qualities of the vicar-general,* which are modified somewhat in comparison with the old law.

The vicar-general must be a member of the secular

clergy, at least thirty years of age, a doctor or licentiate of sacred theology and canon law, or at least well versed in said branches, of sound learning, righteousness, prudence, and experience in administrative matters.

If the diocese has been entrusted to a religious order, the vicar-general may be a member of that order.

The office of vicar-general cannot be committed to the canon penitentiary, nor to one related to the bishop by blood in the first, or second touching the first, degree, nor, except in case of necessity, to a parish priest or any one occupied with the cure of souls.

Powers of the Vicar-General

The vicar-general, by virtue of his office, enjoys that temporal and spiritual jurisdiction in the whole diocese which the bishop, as Ordinary, possesses *iure ordinario,* except what the bishop reserves to himself, or what requires a special mandate from him under the law.

Unless there is express provision to the contrary, the vicar-general can be executor of Apostolic rescripts sent to the bishop or his predecessor in the administration of the diocese. He also enjoys the *habitual faculties* granted by the Holy See to *ordinarii locorum.*

Hence there is now no longer any doubt as to the character of the vicar-general's power. It is an ordinary power, conferred by the act of appointment, and, therefore, coextensive with the ordinary power of the bishop himself in spiritual and temporal matters. Therefore, be it said by the way, the custom of appointing two vicars-general, one *in temporalibus* and one *in spiritualibus,* is not to be admitted, although, as stated above, two vicars-general may be appointed *in solidum.*

From the ordinary power of the vicar-general the Code exempts that which the bishop has reserved, and that for which the law requires a special mandate. As to the first clause, it should be remembered that *regula iuris* 81, in 6°, states: *"In generali concessione nequaquam illa veniunt, quae non esset quis verisimiliter in specie concessurus."* Some authors give a list of such cases, which, however, is of little value, since the bishop must state the reservations he wishes to make, otherwise the vicar-general acts validly and licitly in such cases.

Of greater importance is the second clause. A *special mandate* is required under the Code in the following cases:

1. For excardination and incardination (can. 113);
2. for appointments to ecclesiastical offices (can. 152);
3. for convoking a diocesan synod (can. 357, § 1);
4. for appointing and investing pastors (can. 455, § 1, 3);
5. for removing assistants (curates) (can. 477, § 1);
6. for erecting pious associations (can. 686, § 4);
7. for reserving sins (can. 893, § 1);
8. for granting dimissorial letters (can. 958, § 1, n. 2; can. 959);
9. for permitting marriages of conscience (can. 1104);
10. for consecrating sacred places (can. 1155, § 1);
11. for granting the consent necessary for the building of a church (can. 1162, § 1);
12. for authenticating relics (can. 1283, § 2; can. 1285);
13. for demanding an offering of priests for saying mass in a poor church (can. 1303);
14. for erecting benefices or parishes (can. 1414, § 3);
15. for uniting benefices (can. 1423, § 1);
16. for conferring benefices (can. 1423, § 2);

17. for granting canonical institution (can. 1466, § 2);

18. for permitting an exchange of benefices (can. 1487, § 1);

19. for inflicting ecclesiastical penalties (censures etc.) (can. 2220, § 2);

20. for remitting penalties inflicted by the vicar-general as judge (can. 2236, § 3);

21. for absolving apostates from excommunication (can. 2314, § 2).

The vicar-general is furthermore *entirely powerless:*

1. to nominate honorary canons, either collegiate or cathedral, from the diocese or outside the diocese (can. 406, § 1);

2. to establish or found religious congregations (can. 492, § 1);

3. to change a removable parish into an irremovable one (can. 454, § 3).

Duty and Cessation of the Office of Vicar-General

In order to maintain the old principle that the bishop and his vicar-general form one and the same person and tribunal, the Code demands that the vicar-general report the *chief affairs (acta) of the curia to the bishop* and inform him of what was done or is to be done for safeguarding the discipline of clergy and people, and that he should not use his powers contrary to the intention and will of his bishop.

The jurisdiction of the vicar-general *expires* by resignation, by revocation on the part of the bishop, or by a vacancy in the episcopal see. When the bishop's jurisdiction is suspended, that of the vicar-general also ceases. No reason need be given for the removal, for the vicar-

general is removable *"ad nutum episcopi."* But the recall must be duly intimated to him.

If the episcopal see becomes vacant, the jurisdiction of the vicar-general ceases, because the bishop and vicar-general are considered one tribunal. However, if a common error should occur concerning the death of the bishop, the official acts performed by the vicar-general during the supposed vacancy would be valid.

The jurisdiction of the vicar-general is suspended if the bishop is suspended from jurisdiction, or excommunicated, or placed under the personal interdict. But a mere *suspensio a divinis* of the bishop would not affect the jurisdiction of his vicar-general.

Honorary Rights of the Vicar-General

The *honorary rights* of the vicar-general are the following: He takes *precedence* over the whole clergy of the diocese on public and private occasions, even if the bishop is present, and over all dignitaries and cathedral canons in choir as well as in chapter meetings, unless there is a clergyman endowed with episcopal character and the vicar-general lacks that character. If the vicar-general is a bishop, he enjoys all the honorary privileges of titular bishops. If he is not a bishop, he is entitled, during the time he serves as vicar-general, to all the privileges and insignia of a titular protonotary apostolic. As he takes precedence over all prelates not endowed with the episcopal character, he ranks above protonotaries and abbots, actual and titular. A vicar-general who has received episcopal consecration, ranks as a titular bishop. If the vicar-general is not a bishop, he is entitled to the privileges and insignia of a titular protonotary apostolic,

the lowest class of the protonotaries' college, as remodeled by Pius X in his Motu proprio, *"Inter multiplices,"* Feb. 21, 1905. Vicars-general enjoy the title and privileges of this class of prelates by right during the whole tenure of their office, and are, therefore, properly called monsignori. Their dress is a black cassock, which may have a trail (but not unfolded), with a silk belt and two pendants (*flocculi*) on the left, a rochet, mantelette, and biretta, all black. They do not genuflect but only bow to the bishop or the cross, and are incensed *duplici ductu;* they say Mass as ordinary priests, but have the right to use the *bugia* or hand-light. Over their daily dress, on solemn occasions, including audiences with the Pope, they may wear a silken belt with a black fringe, a hat with a band and tassels of black color. On their coat-of-arms they may place a hat of black color with ribbons or strings and six tassels on each side, all black (not purple or red).

THE CHANCELLOR AND OTHER NOTARIES— THE EPISCOPAL ARCHIVES

The Code attests the great care which the Church wishes to be taken of all important documents pertaining to diocesan government. She herself has set a shining example. From the earliest times Rome had its regional notaries, who were employed partly in collecting the acts of the martyrs, and partly in writing and preserving documents for the papal archives. The latter existed as early as the fourth century, as we learn from the *Liber Pontificalis* that the popes preserved their official, legislative, and disciplinary documents *in archivo ecclesiae.* The care of these archives required persons of ability to scrupulously draw up the necessary documents and watch over them. For this purpose a host of scribes (called

notarii, scriniarii, chartularii) were employed at the papal court, who not seldom rose to dignities and held high rank in the pontifical family.

All this goes to prove the importance of ecclesiastical archives and makes the following enactments more intelligible. As the episcopal court forms part of the universal machinery of the Church, those who are entrusted with the diocesan archives should bestow upon them minute and loving care.

Every episcopal curia should have as *chancellor* a priest appointed by the bishop, whose chief business it is to file official documents in the archives and to keep them in chronological order and properly indexed. If necessary, the chancellor should be given an assistant, with the name of vice-chancellor or vice-recorder. The chancellor, by reason of his office, is also an ecclesiastical notary.

The documents may be indexed according to parishes, or topically, under such heads as appointments, assistants, charitable institutions, marriages, ordinations, parish priests, religious, sisterhoods, etc. The chronological order had best be based on the calendar year.

Besides the chancellor, the bishop may appoint other ecclesiastical notaries, who may act in all ecclesiastical matters, or only in judicial affairs, or in certain cases, or for a certain class of cases, as the bishop deems proper. Where there is a lack of clerics, laymen may be chosen for this office; but in all criminal cases of the clergy the notary must be a priest.

The chancellor and the other notaries must be men of good reputation and beyond suspicion concerning character and trustworthiness. All of them may be removed or suspended by the one who has appointed them, or by his successor or superior, but not by the vicar-capitular, except with the consent of the chapter. They may be re-

moved by the bishop for any or no reason and without appeal to higher authority. They may also be suspended for a time, according to the good pleasure of the bishop. The right of removing and suspending the chancellor and other ecclesiastical notaries belongs to the bishop, to his successor, and to his *superior*.

Functions of Ecclesiastical Notaries

These are chiefly the following:

(1) To put in writing all episcopal acts or documents concerning enactments (*dispositiones*), orders, and engagements (*obligationes*), judicial summons and intimations, decrees and sentences, and whatever else requires their coöperation;

(2) To record all important events with place and date,—day, month, and year;

(3) To exhibit the acts or documents preserved in the diocesan archives to those who rightfully ask to see them, and to furnish authenticated copies of the originals.

A notary can make official records only in the territory of the bishop by whom he has been appointed, and in matters with which he is lawfully entrusted. The office of notary is thus partly that of a historiographer. *Legal acts* are the orders issued by the bishop (*dispositiones*), *e. g.,* concerning appointments to offices, conferences and arrangements for confirmation. Likewise the *obligationes,* which imply all kinds of material and spiritual engagements, for instance, (1) title deeds, mortgages on church property, etc., (2) foundations for masses, legacies or bequests, especially last wills. Legal in the strictest sense are those acts which belong to judiciary procedure, summons, intimations, sentences, etc., all of which must

be composed and carefully recorded because their validity might otherwise be jeopardized.

As the *historiographer* of the diocese, the chancellor or notary should record the erection of parishes, the labors of priests, the work done by institutions of charity, etc. Historical records are very important, *inter alia,* for ascertaining prescription and custom. The chancellor, therefore, in doing his duty conscientiously, serves History, which "teaches by example."

Here we would draw attention to the necessity of using durable and specially prepared ink. It is an unfortunate fact that many, especially typewritten papers, in course of time become almost illegible, whereas many manuscripts of the ninth and tenth centuries can still be read with little difficulty.

The last paragraph of our canon *limits the activity* of notaries to the territory of the bishop to whom they owe their appointment. This rule is based on the nature of episcopal jurisdiction, which is strictly limited in regard to territory, according to the principle: *"Extra territorium ius dicenti impune non parctur."* [67] A notary who would attempt to perform judicial functions outside of his territory would act without authority, and therefore invalidly. Besides, a notary can write or compose no official documents except those for which he has been authorized.

The Diocesan Archives

The bishop should provide a safe and convenient place where all documents pertaining to the spiritual and temporal affairs of his diocese may be properly arranged and

[67] C. 2, 6°, I, 2.

safely kept under lock and key. A careful inventory or list of the documents kept in the diocesan archives should be made, as well as a brief summary of each. Within the first two months of every year there should be added to the catalogue such new papers as have accumulated in the course of the preceding year or been found neglected elsewhere.

The Ordinaries are instructed to make a careful search for diocesan documents and papers which may have got lost or scattered, and to employ every feasible means to have them restored to the diocesan archives.

The archives are to be locked, and no one is allowed to enter the place where they are kept without the permission of the bishop, or of both the vicar-general and the chancellor. The chancellor shall keep the key.

No one is allowed to take papers out of the archives without the consent of either the bishop or the vicar-general; and if any papers are taken out, they must be returned after three days, unless the Ordinary permits them to be kept for a longer time. Such permission, however, should be granted but rarely. Whoever takes a paper from the archives must leave a receipt signed in his own handwriting with the chancellor.

Besides this there should be a safe or chest, capable of being locked and immovable (safe or safety vault), wherein all secret papers should be carefully preserved. Documents pertaining to criminal cases and moral matters which have reference to deceased defendants or to cases settled by condemnatory sentence over ten years ago, should be burnt every year, only a brief summary being retained of each case with the text of the final sentence.

Of the contents of these secret archives an inventory

or catalogue must be made according to can. 375, § 2.

These archives must be locked with two different keys, one of which is kept by the bishop or Apostolic administrator, the other by the vicar-general, or, if there is no vicar-general, by the chancellor.

The bishop or Apostolic administrator, after having procured the other key from the vicar-general or chancellor, may, if necessary, open and inspect the secret archives alone and without witnesses, and after doing so, should again lock it with both keys.

Canon 380 provides that the bishop, immediately after taking possession of his diocese, shall appoint a priest who, during a possible vacancy of the see or an enforced absence of the bishop (*sede impeditâ*), shall take possession of the key.

Canon 381 says that when a diocese has no Apostolic administrator during a vacancy or an enforced absence of the bishop, the custodian of the secret archives shall hand over the key to the temporary ruler of the diocese, if he be an ecclesiastic designated by the bishop; but if the government is in the hands of the vicar-general, he shall retain the key. The key shall be handed to the vicar capitular as soon as one is appointed, and at the same time the vicar-general or chancellor shall give up the other key to the first dignitary of the diocesan chapter or the oldest in rank among the diocesan consultors.

Before the keys are handed over to the persons designated in § 1, the vicar-general (or chancellor) and the custodian appointed by the bishop shall seal the archives, including the secret chest, with the seal of the episcopal curia.

Canon 382 rules that the secret archives (*tabularium, armarium*) shall be opened or unsealed only in urgent

cases by the vicar-capitular, in the presence of two canons or diocesan consultors, who shall watch that no papers are carried off. The vicar-capitular may examine the papers alone in the presence of said canons or consultors, but he is not allowed to take any of them away, and the archives must again be sealed after inspection. If the seals were removed and the archives opened, the vicar capitular must inform the new bishop why he opened the archives.

Canon 383 urges the bishop to take care that all documents concerning the cathedral, collegiate and parish churches, as well as confraternities and pious institutions, be made out in duplicate and that one copy be kept in the archives of the respective church or institution, whilst the other is preserved in the episcopal archives. No papers are to be taken from these archives except under the conditions stated in can. 378.

Canon 383 refers to three other canons, *viz.*, 470, 1522, and 1523, which pertain to the parish books and inventories procured by the diocesan trustees. Of these a copy must be sent to, and preserved in, the episcopal archives. It is evident that parishes in charge of exempt religious must comply with this law only in so far as parochial affairs are concerned.

According to canon 384, papers in parochial and episcopal archives which need not be kept secret, may be inspected by any one who is interested in them, and authentic copies may be made for any one at his own expense. The chancellors of the various *curiae*, parish priests and other custodians, in communicating documents or copies of documents from the archives entrusted to their care, shall follow the rules laid down by legitimate ecclesiastical authority, and in doubtful cases consult their Ordinaries.

EXAMINERS AND PASTORS CONSULTORS

The Code ordains that every diocese should have synodal examiners and parish priest consultors, to be appointed at and approved by a synod, but proposed by the bishop. The number of examiners and consultors is left to the prudent judgment of the bishop, but there should not be less than four, nor more than twelve.

These officials should be elected by those attending the synod after the bishop has proposed several names. The balloting may be secret or open; but a majority of votes is required for election. Hence, if one or the other, or even all the candidates proposed by the bishop do not receive the necessary majority, he must propose other names for those rejected, until the number of appointees has been reached. This number is determined by the bishop, preferably at the synod. The maximum and minimum are settled by law.

Canon 386 provides that, if any examiner or parish priest consultor should die or go out of office during the time intervening between synods, the bishop, with the advice of the cathedral chapter [our diocesan consultors] shall appoint another in his stead, and that the same rule shall be observed in the appointment of examiners and consultors, if no synod is held.

This enactment precludes the idea that the office of consultor or examiner may be attached to a parish, dignity, or office in such a way that the successor in that parish, etc., would *eo ipso* be examiner or consultor because his predecessor held that office.

Examiners and consultors, whether synodal or prosynodal, *go out of office ten years from the date of their*

appointment, or, if a synod is held, even sooner. However, they may finish cases already begun, and, with due regard to the prescribed regulations, may be re-elected.

Those appointed in the place of deceased or retiring examiners and consultors shall merely fill the unexpired terms.

These officers cannot be removed by the bishop except for weighty reasons and with the advice of the chapter or the diocesan consultors. A weighty reason would be one that is considered sufficient for removing a pastor, or a crime which admits of, or demands, removal from office according to the penal Code (can. 388).

Canon 389 makes it obligatory for the synodal (or pro-synodal) examiners *to perform their task* diligently, especially at the examinations which are held for the appointment of parish priests and in the course of procedures aiming at the removal of pastors. For the examination of candidates for Holy Orders and of priests who desire the faculty of hearing confessions and of preaching, and also of newly ordained priests for three years after ordination, the bishop is at liberty to employ either the synodal examiners or others.

Can. 390 permits the same person to be examiner and consultor, but not in the same cause. Hence in the canonical process for the removal of parish priests, one who holds both offices can act in only one capacity, either as examiner or as consultor.

DIOCESAN CHAPTERS—CONSULTORS

The Code is quite elaborate in treating of chapters of canons. This is natural in view of the historical and juridical importance of these corporations, which still form the senate of the local Ordinaries in most dioceses

across the ocean. England, after the restoration of the hierarchy, also restored the chapters, although in a somewhat modified form. This was done in accordance with a Roman rescript embodied in the acts of the First Provincial Council of Westminster, held in 1852. Among other things it may be mentioned that no honorary canons are permitted and that the Newport chapter is the same as the monastic chapter of the Benedictines.[68] In the United States honorary canons exist only in the archdiocese of New Orleans. Honorary canons are mentioned also in the acts of the Second Council held in Port of Spain, on the island of Trinidad.[69] In Canada, at the time of the Third Provincial Council of Quebec, in 1863, there existed a chapter in Montreal, but none in the other dioceses. The S. C. of the Propaganda was informed of the reasons why chapters were impossible. These reasons are: lack of priests who, as missionaries, had to travel from place to place, and the poverty of the bishops.[70] These conditions still prevail in most American dioceses. So far as we are aware, no petition was ever sent from this country to Rome, asking for chapters of canons,—most probably for the same reason as those advanced by the bishops of Quebec. But the Fathers of the Second Plenary Council of Baltimore exhorted the bishops to appoint helpers and councillors on whom they might unload a part of their burden.[71] The Third Plenary Council expressed the wish to see chapters instituted, but at the same time was compelled to state that condi-

[68] *Coll. Lac.*, III, 923; and Appendix I–VI, *ibid.*, 955 ff. Those who are interested in this subject may consult Taunton, *The Law of the Church*, 1906, pp. 151 ff.

[69] *Coll. Lac.*, III, 1113.

[70] *Ibid.*, III, 684 f.

[71] *Acta Conc. Plen. Balt. II*, n. 70 f.

tions were not as yet favorable, and consequently enacted that *diocesan consultors* should be appointed, half of them freely by the bishop himself and the other half on proposal of the diocesan clergy.[72] The Code accepts the fact of diocesan consultors, but the mode of appointment which it prescribes deviates from the rules laid down in the Third Plenary Council of Baltimore, which, therefore, under can. 6, n. 1, must be regarded as abrogated, or at least modified. The Code leaves the nomination or *appointment of consultors entirely to the bishop.*

Since, according to can. 427, the diocesan consultors take the place of the cathedral chapter, as the bishop's senate, there is some relation between both. However, there is not complete similarity between a cathedral chapter and a board of diocesan consultors. A chapter of canons, either cathedral or collegiate, is a corporation of clerics, instituted for the purpose of more solemnly celebrating the divine service. A cathedral chapter has the additional function of assisting the bishop as his senate and council, and in governing the diocese during a vacancy in the episcopal see. The primary purpose, therefore, is solemn divine service. Do our diocesan consultors share in this prerogative? They do not, and therefore can. 398 cannot be applied to them.

(1) The canons of a chapter take the bishop's place in the celebration of the sacred functions on certain solemn feasts of the year;

(2) When the bishop celebrates pontifically, they must offer him the sprinkler at the entrance of the church, and one of them must act as assistant priest;

(3) When the bishop is ill, the canons must administer the sacraments to him, and after his death, hold the funeral services over his body;

[72] *Acta Conc. Plen. Balt. III,* n. 17–19.

(4) They shall convoke and preside over the chapter, and they shall prescribe and regulate whatever pertains to the choir service, provided the dignity belongs to the chapter.

Our diocesan consultors do not constitute a corporation with special statutes, and hence canons 410 and 411 are not applicable to them. Neither may the bishop insist on can. 412 with regard to assisting and serving him at the celebration of pontifical High Mass or pontifical functions in other churches of the cathedral city or its suburbs. The bishop may indeed invite, and even command, the consultors, like any other priests, secular or non-exempt religious, to assist him, but he has no strict right to do so, for the consultors are not beneficiaries, nor do they enjoy the honorary rights of canons.

What remains, therefore, is that the diocesan consultors form the senate of the bishop and are to assist him in administering the affairs of the diocese. This assistance or help consists in giving either consent or advice. In order to realize the difference between consent and advice, can. 105 may be consulted. If *consent* is required by a law or particular statute, the superior acts invalidly if he goes against the votes of his advisors; if *advice* only is required (for instance, by such terms as *"de consilio consultorum,"* or *"audito capitulo,"* or *"audito parocho"*) it is sufficient that he has heard these persons in order to act validly. Hence the Code demands for the *validity of an act,* even if advice only is required, that the superior hear or consult the persons interested. Furthermore, the same can. 105 requires that, if the consent or advice is to be given by several persons, these persons should be lawfully summoned and asked to give their opinion. Therefore, our diocesan consultors must be present *in a body* whenever any business is brought before them. In

other words, the bishop cannot ask the advice of each individual consultor, either orally or by letter, and then act at his pleasure. Whenever the consent of the consultors is necessary, individual questioning should *a fortiori* be excluded, because that consent, as a rule, must be given by secret ballot. The summons must be understood in the sense of the Code. If, for instance, all the diocesan consultors are present at a retreat or banquet, the bishop may call them aside and ask for their opinion. Or if they were perchance all present at one time and in the same place, no special summons would be required. But if more than one-third of the consultors would be overlooked in issuing a summons, be it by mistake or intentionally, the proceeding would be invalid (can. 164).

Appointment of Consultors

Where a cathedral chapter cannot, as yet, be established or restored, the bishop shall appoint diocesan consultors. These consultors shall be priests distinguished by piety, exemplary conduct, learning, and prudence.

The appointment of consultors belongs to the *bishop,* who, however, must observe the special regulations prescribed by the Apostolic See (*salvis peculiaribus Apostolicae Sedis praescriptis*) and the rules laid down in can. 426.

What the *"peculiar regulations of the Apostolic See"* are, is not expressly stated. Perhaps the reference is to a conference held in Rome, in 1883, for the introduction of cathedral chapters according to the English fashion. The Cardinals of the Propaganda at that time recognized the present system of consultors. But the Holy See reserves the right of changing the present boards of consultors into, say, corporations or quasi-chapters with cor-

porate rights. Should this change be made, however, it will be natural to expect a change in the method of electing or nominating bishops, from which procedures the consultors are now practically excluded.

The *qualities* required in consultors are almost verbally taken from the enactments of the Second and Third Plenary Councils of Baltimore. These presupposed, the *bishop,* as long as Rome does not change the present law, may freely *name* his consultors, and in doing so is not bound by the advice or consent of the counsellors, but need observe only what the Code prescribes in Can. 426.

There shall be at least six diocesan consultors, but four will suffice if the number of priests in the diocese is small. They should all live in or near the episcopal city.

Before they enter upon their office they must take an *oath* to discharge their duties faithfully and without human respect. In large and populous dioceses the *number of consultors* may be more than six, for the canon says, "at least six." But it may never be less than four, no matter how small the diocese. Therefore the rule of the Third Plenary Council of Baltimore, that there should be at least two consultors, must be modified accordingly.

A leaning towards cathedral chapters is perceptible in the injunction that the consultors should live in or near the *episcopal city.* The reason is not far to seek. Forming, as they do, the senate of the bishop, who is supposed to call them together from time to time, they should be near at hand.

Before whom the consultors appointed have to take oath is not explicitly stated. However, taking into consideration that the profession of faith must be made before the Ordinary or his delegate, and at the same time before the other consultors, it seems proper that the oath of office should be taken into the hands of the bishop or his rep-

resentative, appointed *ad hoc;* and if the profession of faith is made at the same time, the other consultors must also be present. To take the oath by proxy is neither permitted nor valid.

The term of a consultor is three years. After the expiration of that term the bishop may replace a consultor or leave him in office, according to his good pleasure.

If a consultor, for any reason, goes out of office during his term, the bishop, with the *advice* of the other consultors, shall appoint in his place another priest, who shall remain in office until the three years have expired.

If the three years expire when the episcopal see is vacant, the consultors of the last term remain in office until the arrival of the new bishop, who must make provision for a new board of consultors within six months from the date of taking possession of his see.

Should a consultor die or resign during a vacancy in the episcopal see, the vicar-capitular or administrator, with the *consent* of the other consultors, shall name another, who must, however, have the approval of the new bishop (after being installed) in order to act as consultor.

Functions of Consultors

Can. 427 defines, in a general way, the *functions* of diocesan consultors. The body (*coetus*) of diocesan consultors, as the bishop's senate, takes the place of the cathedral chapter, and hence whatever the canons prescribe for the cathedral chapter, in relation to the government of the diocese, either with the bishop or during a vacancy of the see, applies to the diocesan consultors as a body.

The Code requires the *consent* of the consultors as a body (*coetus*) in the following cases:

1. For restoring extinguished cathedral dignities (can. 394, § 2);

2. for alienating church property the value of which is between 1,000 and 30,000 lire or francs (normally about $6,000) (can. 1532, § 3);

3. for renting or leasing church property, if the rental exceeds the sum of 30,000 francs, but the lease is made for less than nine years; also in case the rental is between 1,000 and 30,000 francs and the lease runs for more than nine years (can. 1541, § 2, n. 1, 2).

These are the only cases mentioned in the Code which require the *consent* of the board of diocesan consultors.

The *advice* of the consultors, according to the Code, is required in the following cases:

1. For appointing examiners and pastors consultors to fill eventual vacancies in such offices (can. 386);

2. for removing examiners and pastors consultors (can. 388);

3. for appointing to all benefices in cathedral and collegiate chapters, except the dignitaries (can. 403; this does not concern our country);

4. for changing a removable parish into an irremovable one (can. 454, § 3);

5. for reserving cases (can. 895);

6. for the appointment of the two seminary boards (can. 1359, § 2);

7. for uniting, transferring, dividing, or dismembering benefices (parishes) (can. 1428, § 1);

8. for appointing boards of administrators for diocesan church property (can. 1520, § 1);

The advice of this *board of administrators* is required:

1. for the erection of benefices or parishes, if the endowment is made in cash and the money has to be invested (can. 1415);

2. for the alienation of church property, the value of which does not exceed the sum of 1,000 francs (can. 1532, § 2);

3. for leasing church property, the rental of which is between 1,000 and 30,000 francs, if the contract runs for less than nine years (can. 1541, § 2).

The *consent* of this board is also required in the two cases mentioned above, which demand the consent of the consultors, *viz,* n. 2 and n. 3.

The Third Plenary Council of *Baltimore* demands that the advice of the consultors be taken:

1. For convoking a diocesan synod and promulgating its decrees;

2. for dismembering a parish;

3. for handing over a parish to a religious community (in which case it also requires the permission of the Holy See);

4. for appointing the seminary board;

5. for appointing new consultors and pro-synodal examiners;

6. for alienating church property to the amount of more than $5,000.

A comparison will show that n. 1 is not in conformity with the Code, because not only does the law not require the advice of the consultors, but it leaves it entirely to the bishop to convoke a synod (can 357). N. 6 must also be corrected to make it conformable to the Code. The rest is in accordance with the Code.

Another, rather important, function of the consultors consists in electing the *vicarius capitularis* or administrator in case of a vacancy in the episcopal see, provided, however, there be at least five or six consultors in the diocese.

Removal of Consultors

Canon 428 provides that no diocesan consultor should be removed during his term of office without just reason and without the advice of the other consultors.

This law is taken almost verbally from the Third Plenary Council of Baltimore, which enumerates some legitimate causes of removal, *viz.*: if a consultor, by reason of age or sickness, is unable to perform his duty, or if he has committed a crime that renders him unworthy of his office; or if his reputation has suffered considerably through his own fault. In such cases, therefore, the bishop may remove a consultor after having asked the advice of the other consultors. This means that no trial, not even a summary one in the strict sense of the term, is required. On the other hand, however, the bishop is not on that account relieved of the moral duty of at least making an investigation into charges brought against a consultor.

CANONICUS THEOLOGUS AND POENITENTIARIUS

The Code prescribes that in every cathedral church there should be a canon theologian, and, wherever possible, also a canon penitentiary (confessor).

The canon theologian and the penitentiary should be chosen from among those who are best fitted for the respective tasks; but, other things being equal, a doctor of divinity is to be preferred for canon theologian, and a doctor of divinity or of canon law for penitentiary. It is also becoming that the penitentiary shall have completed the thirtieth year of age.

It seems, however, that this law, though apparently general, really applies only to countries or churches where

there are prebends established for that purpose, or, in other words, where there are chapters of canons in the proper sense of the word. Hence we hardly believe that these officials *must* be appointed in America.

VACANCY OF THE EPISCOPAL SEE
(CAN. 429–444)

The Code treats of two kinds of vacancies, vacancy *de facto* or quasi-vacancy, and vacancy *de facto et iure*. The former goes by the name of *sedes impedita,* because the actual incumbent still holds a legitimate title to the see, but is momentarily prevented from exercising his jurisdiction, as happened at Cologne in 1837, and is happening under the Soviet government in Russia.

1. Concerning *sedes impedita* the Code rules as follows:

a) This impediment may be caused by captivity, relegation, exile, or inability, and the circumstances may be such that the legal incumbent may not be able to communicate with his diocesans. If such is the case, the government of the diocese devolves upon the vicar-general or upon some other ecclesiastic appointed by the bishop, unless the Holy See sees fit to make a different arrangement. The bishop may, for any serious reason, appoint several ecclesiastics to whom the government may pass successively.

b) If the vicar-general cannot act or the appointment of ecclesiastics as delegates of the bishop proves impracticable, the cathedral chapter shall elect a vicar-capitular, who shall assume the government of the diocese with the powers proper to his office.

c) Whoever exercises the government *ad interim* must report to the Holy See (S. C. Consistorialis) that the

see is *impedita* and that he is temporarily in charge of affairs.

d) If a bishop is excommunicated, or interdicted, or suspended, the metropolitan is obliged, by virtue of his office, to inform the Holy See. If a metropolitan incurs canonical censure, the senior suffragan must make report. If the prelate who is censured is immediately subject to the Holy See, the metropolitan who has been chosen by him *"semel pro semper,"* is obliged to recur immediately to Rome. In the meantime the vicar-general cannot continue to exercise his jurisdiction, because his power is suspended during the suspension of the bishop (can. 371), and hence the regular business of the episcopal curia must cease until Rome makes provision, which now-a-days, as a rule, can be done promptly. If any jurisdictional act should meanwhile be performed, which would give rise to a general error, the validity of such act could not be doubted (can. 209).

2. As to *vacancy proper,* the Code rules as follows:

The episcopal see becomes vacant by the death of the bishop, by his resignation, as soon as accepted by the Roman Pontiff, or by his transfer and privation.

Nevertheless, with the exception of conferring ecclesiastical benefices or offices, all the official acts of the vicar-general are valid until he has received sure notice of the death of his bishop. The acts of the bishop himself and those of his vicar-general are valid so long as these officials have not been duly notified of the vacancy.

Within four months from the date of the notice of his transfer, the bishop must repair to the diocese to which he is transferred, and take possession of it. From the date of his taking possession of the new diocese, his former see is vacant. Meanwhile, from the date of notice to that of his taking possession, the bishop

(1) enjoys the full power of a vicar-capitular in the old diocese, while the power of his vicar-general ceases;

(2) he retains all the honorary privileges of a resident bishop and

(3) is entitled to all the episcopal revenues.

The Vicar-Capitular or Administrator

Can. 312 mentions Apostolic administrators, to whom, either during the occupancy of the episcopal see or during its vacancy, a canonically established diocese may be entrusted. The Holy See alone may appoint such an administrator, either permanently or for a definite period. Can. 431 refers to this provision, and consequently excludes the appointment, or election of a vicar-capitular in case an Apostolic administrator has been appointed by Rome, or similar provision has been made.[73] For there would be interference of an inferior with a superior power. On the other hand, says the law, if no such contrary provision was made, the whole government of the diocese passes to the *cathedral chapter,* as has always been the rule wherever dioceses were properly organized.

Can. 431, § 2, mentions a special arrangement by which the *archbishop* or another bishop may designate an administrator for a vacant see. Such an administrator enjoys the same faculties as the vicar-capitular, and is subject to the same obligations and penalties. It has been authentically declared that the particular laws given by

[73] *"Vel aliter a Sancta Sede provisum fuerit";* such other provision might be made by appointing a coadjutor or a vicar-general, who would remain in office until the episcopal see was properly filled.

the Second Plenary Council of Baltimore with regard to the nomination of an administrator for a vacant see, are no longer in effect.[74] Consequently (a) the metropolitan or other bishop can appoint the administrator only by devolutive right, as set down in can. 432, § 2; (b) a bishop cannot appoint an administrator before his death to govern during the ensuing vacancy; and (c) the appointment, or rather election, of an administrator belongs by law to the board of diocesan consultors, provided there be at least five or six of them in the diocese.

Appointment of the Vicar-Capitular

In case of a vacancy in an episcopal see, the cathedral chapter, within eight days from the date of notice received, must appoint a vicar-capitular, who shall govern the diocese in the place of said chapter. If the chapter also administers the revenues, it must appoint one or more trustworthy and industrious persons as administrators thereof (*oeconomi*).

Should the chapter, for any reason, neglect to designate a vicar-capitular or *oeconomus* within the prescribed term, the right of making this appointment devolves on the metropolitan; and if the vacant see is a metropolitan see, or if the metropolitan see is vacant simultaneously with a suffragan see, the right of appointment passes to the senior suffragan.

If a diocese immediately subject to the Roman Pontiff, or an *abbatia* or *praelatura nullius* (can. 285), becomes vacant, and the chapter fails to appoint a vicar-capitular or *oeconomus* within the stated time, the metropolitan

[74] Comm. Pont., Nov. 24, 1918; S. C. Consist., Feb. 22, 1919 (*A. Ap. S.*, XI, 75 f.).

chosen *"semel pro semper"* may designate the said officials, unless (in the case of an abbacy or prelature of religious) the respective constitutions provide otherwise.

The chapter should inform the Apostolic See of the death of the bishop as soon as possible, and the vicar-capitular should notify the same of a new election, as soon as made.

"In the United States," says Smith,[75] "no such procurators or administrators of the temporalities of vacant dioceses are appointed. Vacant sees are usually governed, both in *temporalibus* and *spiritualibus,* by one and the same administrator." This opinion may even now be held and followed, but only conditionally, *viz.,* as long as the diocesan consultors are not concerned with the *"munus percipiendorum fructuum";* because the Tridentine as well as the new law speak conditionally (*"si"* or *"ubi"*). Hence, as long as the bishop takes care of the temporalities with the administrators, who must henceforth be chosen, and not the diocesan consultors as such, the election of a procurator is not required in the U. S.

"Intra octo dies ab accepta notitia vacationis" implies any sufficiently trustworthy notice of the vacancy (either by death or transfer), because the notice is not further described. For eight days, therefore, the cathedral chapter, or the diocesan consultors as a body, are entrusted with the government of the diocese, as it was before the Council of Trent.

The *devolutive* right becomes effective only in case the chapter or the diocesan consultors fail to comply with the law. This failure may be the result of either neglect or disagreement, for the Code does not state whether it must be a culpable or an inculpable act. In any case,

[75] *Elements,* I, n. 635, p. 393; cfr. our *Commentary,* II, 470 ff.

the metropolitan may designate a vicar-capitular, and is not bound to notify the chapter of his intention, but merely of the person elected. The new law deviates from the old practice with regard to the *senior suffragan*. Formerly, if a suffragan see became vacant whilst the metropolitan see was without an incumbent, the metropolitan chapter was entitled to name a vicar-capitular for the vacant suffragan see. Now the senior bishop designates the vicar-capitular in the cases mentioned.

But who is the *senior suffragan?* The text says *"antiquior,"* an attribute which has reference to the see rather than to the person of its incumbent, and therefore the senior bishop is the one whose diocese was erected before the others: *"prior in tempore, potior in iure."*

The right of the metropolitan extends also to such vacant sees as are immediately subject to the Roman Pontiff and to *abbatiae nullius*. Exception, however, is made concerning the latter whenever the Constitutions of the religious provide otherwise. These generally determine that an administrator be chosen and admit no interference from outside. The clause safe-guards the exemption as well as the authority of the Holy See to which such Constitutions must be submitted for approval.

The new law is very emphatic in demanding that only *one* vicar-capitular be appointed; if this law were disregarded, the election—and we suppose also the appointment made by the metropolitan—would be null and void.

The *manner of voting* at the election, when performed by consultors, must be the same as that prescribed for elections proper. An absolute majority is required to elect. Hence, if the number of electors is six, four votes must be cast for the same person. Any vote which is extorted, or which is not secret, certain, absolute, and

determined is invalid, and must be subtracted from the total. Thus, if one vote out of six were null and void, there would remain five valid votes, of which the candidate would have to obtain three, in order to be elected.

Qualities of the Vicar-Capitular

No cleric can be validly elected to the office of vicar-capitular unless he is a priest, thirty years of age. No one who has been elected, nominated or presented for the vacant see may be chosen vicar-capitular. Furthermore, the vicar-capitular must be a doctor or licentiate of divinity or of Canon Law, or, at least, well versed in these sciences; besides, he must be distinguished by probity of life, piety, sound doctrine, and prudence.

If in any case the conditions prescribed in § 1 have been set aside, the metropolitan, or if the metropolitan see be vacant or it be question of electing a vicar-capitular for the metropolitan see, the senior bishop of the diocese, shall designate the vicar-capitular, after having been duly informed of the election; all the official acts of the so-called chosen vicar are *ipso iure* invalid.

These three conditions affect the validity of the election and, if neglected, according to § 3, give the right of appointing the vicar-capitular to the metropolitan or senior suffragan. The latter, however, cannot proceed to the appointment unless he has been informed that the election was illegal; in other words, he must have verified the fact that the chosen candidate suffers from one of the three impediments stated in § 1.

As in the case of the eight days having elapsed, the devolution takes place only for this one time (*pro ea vice*), and the metropolitan or senior suffragan cannot claim the right of interfering with the next election of a

vicar-capitular to the same see. Hence, if those who are authorized to supply the illegal election, should themselves choose an unfit candidate, the right of election would revert to the chapter. For the metropolitan and senior suffragan, too, are bound by the law. The reason for this assertion is that the law which urges all is nullifying and the law depriving the chapter of the right of election is penal.

Rights or Powers of the Vicar-Capitular

The ordinary jurisdiction of the bishop in spiritual as well as temporal affairs, first passes to the chapter and then to the vicar-capitular, except in regard to matters which the law has expressly excepted.

Therefore, first the chapter, and then the vicar-capitular, enjoy all the powers enumerated in can. 368, § 2, and besides, have the faculties to grant the exercise of pontificals to any bishop; nay, if the vicar-capitular is endowed with the episcopal character himself, he may perform pontifical functions, though without the throne and canopy.

The vicar-capitular and the chapter are not allowed to do anything that might prove prejudicial to the diocese or to episcopal rights; especially are the vicar-capitular and others, either capitulars or outsiders, clerics or laymen, forbidden, either themselves or through others, to withdraw or destroy, conceal or change documents of the episcopal curia.

Nothing is to be changed during the vacancy of a see.

The chapter, in appointing a vicar, cannot reserve to itself any part of the jurisdiction, or limit the term of his office, or make any other restrictions.

The Code, therefore, grants ordinary powers to the

administrator. But it also expressly forbids him to perform certain acts. These are mentioned in several canons, which we here put together. Besides, the Code allows the administrator to exercise a number of rights only under certain conditions; these, too, are placed side by side here. It should also be noted that the Code (can. 315, § 2) grants an *Apostolic administrator* who is appointed only for *the time being* (*ad tempus datus*) the same powers as a vicar-capitular enjoys.

I. The *conditional powers of the vicar-capitular,* according to the Code, are these:

1. He may grant excardination and incardination after a year's vacancy of the episcopal see, but only with the consent of the chapter or the board of diocesan consultors (can. 113).

2. If a diocesan consultor dies or resigns his office, the vicar may, with the consent of the other consultors, appoint another in his place (can. 426, § 5).

3. He may appoint a pastor to a vacant parish, if the episcopal see has been vacant for one full year (can. 455, § 2, n. 3; can. 1432, § 2), and no exception is made in law as to parishes to be conferred by concursus.

4. He may grant dimissorial letters to secular clerics, with the consent of the chapter or the board of diocesan consultors, after the vacancy of the episcopal see has lasted one year. Within the first year of vacancy he may grant them only to *arctati,* namely, such as have already received, or will receive within the year, an ecclesiastical benefice which requires ordination (can. 958, § 1, n. 3). If the vicar-capitular or administrator is a bishop, he may confer orders whenever he is entitled to grant dimissorial letters (can. 959).

As to the appointment or removal of *assistants* (curates), the vicar-capitular is entirely free, and he may

also ratify the election or presentation of a candidate to a vacant parish, and grant canonical institution (can. 455, § 2, n. 1 and 2).

II. A vicar-capitular is forbidden by law:

1. to convoke a diocesan synod (can. 357, § 1);

2. to appoint honorary canons (can. 406, § 1);

3. to convert removable into irremovable parishes (can. 454, § 3);

4. to found religious congregations (can. 492, § 1);

5. to establish confraternities or consent to their erection or aggregation (can. 686, § 4);

6. to reserve sins (can. 893, § 1);

7. to fix the amount of alms for a poor church (can. 1303, § 3);

8. to unite parishes (can. 1423, § 1);

9. to permit an exchange of offices or benefices (can. 1487, § 1);

10. to remove the *defensor vinculi* or the *promotor iustitiae* (can. 1590, § 1); though he may, with the consent of the chapter or board of diocesan consultors, remove the chancellor and notary (can. 373, § 5).

We may add certain prohibitions not expressly mentioned by the Code, but agreed upon by canonists. A vicar-capitular

1. Cannot grant indulgences and must abstain from using the faculty of granting such, if he possesses it.

2. He cannot alienate any church property of value, as this might prove prejudicial to the successor; but he may conclude a favorable financial deal, for instance, getting money at a lower rate of interest or converting bonds into more profitable ones.[76]

[76] Trid., Sess. 7, c. 10, *De Ref.;* Benedict XIV, *De Synodo Dioec.,* II, 9, 7. See c. 62, C. 12, q. 2; c. 1, X, III, 9; Bizzarri, *Collectanea,* p. 40 f.

3. He cannot appoint a vicar-general, although he may, for reasons of sickness or protracted absence, appoint a *locum tenens* with all the faculties which he himself possesses.[77]

The vicar-capitular, after having pronounced the *profession of faith* (can. 1406 ff.), immediately obtains jurisdiction and needs no confirmation from any one. His profession of faith must be made before the chapter. Whether its accidental omission would invalidate his jurisdiction and thus render his official acts null and void, is not stated in our canon or in the one treating of the *professio fidei,* or in the penal code. Hence, *salvo meliori iudicio,* we should say that the clause *"editâ fidei professione"* (ablative absolute) does not affect the jurisdiction itself.

Can. 2403 rules that, in case the vicar-capitular culpably neglects to make the profession of faith, he forfeits every claim to the income, but does not incur loss of the office.

Concerning *precedence* and *honorary rights,* whatever has been enacted about the vicar-general must be applied to the vicar-capitular.

The vicar-capitular is obliged to residence and to the application of the Mass according to can. 338 f.

Unless otherwise provided:

(1) The vicar-capitular and the procurator are entitled to a decent support, determined by the provincial council or by legitimate custom, and taken from the episcopal revenues or other sources.

(2) All other revenues accruing during the vacancy of the see, if they are of a kind that would belong to the bishop in case the see were not vacant, must be reserved for the future bishop.

[77] Schmalzgrueber, lib. I, tit. 28, n. 32.

Removal from and Cessation of Office

The removal of a vicar-capitular is reserved to the Holy See. In case a vicar-capitular or administrator should wish to resign, his resignation must be made in authentic form and presented to the chapter, whose acceptance, however, is not required for the validity of the act. After the resignation, death or removal of the vicar-capitular or procurator, a new one may be appointed by the same chapter, according to the rules laid down in can. 432.

The office of vicar-capitular or procurator ceases immediately after the new bishop has taken possession of his see, according to can. 334, § 3.

The office of vicar-capitular having ceased *ipso iure* upon the new bishop's taking canonical possession of his diocese, the bishop must demand an account of the chapter, the vicar-capitular, the procurator, and other officials appointed during the vacancy, concerning their office, jurisdiction, administration, and charges; and he must proceed against such as have been delinquent in the discharge of their duties, even though they had given an account to, and been absolved or acquitted by, the chapter.

The aforesaid officials shall also render an account to the new bishop of such ecclesiastical documents as may have come into their hands.

SECTION IV

POWERS CONCERNING PERSONS

After mentioning the different coadjutors endowed with jurisdiction in the external forum and the organization of the diocese, the Code proceeds to treat of ecclesiastical persons who are indeed also aids in the management of the diocese, but have no jurisdiction, properly so-called, in the external forum. There are four classes of ecclesiastics who are more or less closely connected with the administration of a diocese: the deans, the pastors, the curates or assistants, and the body of religious.

Here, however, is the place to mention what the Code provides concerning

INCARDINATION IN A DIOCESE
(Can. 111–117)

Incardination takes place by the conferring of the *first tonsure* by the *episcopus proprius*. But who is the *episcopus proprius?* The bishop in whose diocese the one to be tonsured has his domicile, a quasi-domicile not being sufficient for ordination—which is rather strange under present conditions, especially in view of the fact that many seminarians have no domicile whatever, but only a quasi-domicile in the place where they study. Hence the question: Who is the *episcopus proprius of such tonsurandi* who have only a quasi-domicile? The answer is:[1] The Ordinary in whose diocese the ordination takes place, provided the ordinand acquires a

[1] See our *Commentary,* Vol. IV, p. 424.

domicile by taking oath according to can. 956. The spectre of *"Speculatores"* is still hovering over some minds, although the times have radically changed. The only reasonable solution would be that the bishop, before conferring tonsure, promised in writing to adopt the one to be tonsured, and then either himself, or another bishop, with the dimissorials of the adopting bishop, conferred the tonsure.

From the date of the reception of the tonsure incardination is in operation and is supposed to be *permanent* and *unconditional,* at least for the *secular clergy.* In case of secularized religious the Code (can. 641) allows a conditional and presumed incardination.

If a clergyman, then, wishes to *enter a diocese other* than the one for which he was adopted, or into which he had been incardinated, what is to be done?

This can only be effected for reasons of usefulness or necessity on the part of the adopting diocese, always safeguarding the title of ordination. Besides, there are certain *formalities* to be observed. These are: (a) the documents of perpetual and absolute excardination and of perpetual and absolute incardination, the excardination to be accompanied by a *written information,* if necessary secret, as to the clergyman's birth, life, conduct and studies, especially if there be question of incardinating one of a different language and nation. The excardinating bishop is bound in conscience to make a truthful statement; (b) the clergyman to be incardinated must give oath in presence of the incardinating Ordinary or his delegate to serve the new diocese perpetually. Excardination does not take effect until incardination in the other diocese has followed.

These *formalities are not required* in case the Ordi-

nary bestows on a cleric of another diocese a *residential benefice*: α) with the written consent of his own Ordinary, or β) with the written permission of permanent leave of absence (can. 114).

Incardination and excardination papers cannot be granted by the vicar-general without a special mandate, nor by the vicar-capitular (administrator), except after a vacancy of the episcopal see lasting over a year, and even then only with the consent of the chapter or the diocesan consultors (can. 113).

Concerning *incardination of ex-religious* the Code enacts in can. 641 thus: The Ordinary may adopt secularized religious either unconditionally or on trial. If received unconditionally, the religious is *eo ipso* incardinated in the diocese; if on trial for three years, this trial may be protracted for three more years, but no longer. After the lapse of the trial term the religious becomes *ipso facto* incardinated, unless he was dismissed before the lapse. This new law went into effect May 19, 1918, and runs from this date, no matter whether the Ordinary gives notice or not.

Having stated the enactments of the Code, it will not be amiss to make a comparison with the decrees of the Third Plenary Council of Baltimore (nn. 62 ff.). There a distinction is drawn between a formal and a presumed incardination. The *formal incardination* consists in the document signed by the bishop incardinating a strange clergyman, upon the reception of papers of recommendation and excardination; this incardination was not to be given until the *trial* term of three or five years had elapsed. The *presumed incardination* took place after the lapse of said trial term, *ipso facto* in case the incardinating bishop had omitted to issue the incardination paper. This was the law in the U. S. until the Decree

"A primis" was promulgated, July 20th, 1898, by the C. C. Concilii.[2] It was but natural that this decree should provoke some doubts, since it appeared to do away with the enactments of the Council of Baltimore in the matter of incardination. The *"A primis"* demanded what the Code now lays down, namely, written, perpetual and absolute incardination together with an oath.[3] The S. Romana Rota, in a particular decision, had insisted upon the necessity of the oath.[4] Thereupon Bishop Wehrle of Bismark, N. Dak., submitted to the S. C. C. several *dubia,* which turned chiefly upon the condition of the oath.[5] More important is another decision of the S. C. C. It was asked whether the *incardinatio praesumpta* admitted by the Council of Baltimore had been abolished or abrogated by the decree *"A primis"?* The answer was *"Affirmative."* [6] It is evident that the formal incardination, with its experimental or probational character, had not been declared null and void by the promulgation of *"A primis."* This is very noteworthy, because, comparing the Code with this decree, we find that there is no substantial difference between them. Hence, with all due reserve, we may say that this kind of experimental incardination, provided all the other elements or requirements concur, is *even now* admissible in our country. For we are allowed to construe it, *viz.,* the formal incardination as proposed by the Council of Baltimore, thus: The incardination is legally perfect when the first papers are issued; it is, in other words, perfect

[2] See *Collectanea S. C. P. F.,* 1907, n. 2011.

[3] To us this oath appears somewhat superfluous, since it is taken at the ordination, and then *ipso facto* transferred to the other diocese.

[4] See *Acta Ap. Sedis,* 1912, Vol. IV, 249 ff.

[5] See *Acta S. Sedis,* Vol. 39, 486; *A. Ap. S.,* 1913, Vol. V, 37.

[6] See *A. Ap. S.* 1913, Vol. V. 37 f.

in the order of intention, though incomplete in the order of execution; or perfect *in fieri,* not *in facto esse.* That these papers, or the act of incardination, do not become perfect or complete, may be caused by the clergyman in question, if he does not conduct himself as he is expected to, and hence may ascribe it to himself if the effect is not produced by the cause.

Rural Deans
(Can. 445-450)

The Code does not make it imperative for the bishop to appoint rural deans, but very plainly insinuates, or presupposes, that they be appointed. Their appointment as well as removal rests entirely with the bishop, who in this matter needs neither the advice nor the consent of the consultors. The bishop, or a provincial or diocesan synod, may endow them with special faculties. Thus, according to can. 899, the Ordinary should grant to them the faculty of absolving in the cases which the bishop has reserved to himself, and give them the power of subdelegating, especially for the more remote districts.

At least once a year the rural dean must submit to the Ordinary an account of the condition of his district. In this report he shall freely point out the good that was done, as well as the evils that have crept in, scandals and the means employed to uproot them, and make suggestions as to what had best be done to eradicate abuses.

On the days assigned by the bishop each rural dean must call the priests of his district to a meeting or *conference,* at which he must preside. If several conferences are held in different places of his district, the dean must see to it that they are properly conducted.

The rural deans have no power to dispense from the

banns, unless the synod, or the bishop, has communicated this power to them. It should be added that deans have no powers in the external forum, nor are they superior to the vicar-general. Hence, if the Ordinary, the bishop or his vicar-general, should wish to preside at a pastoral conference, a dean would have to cede the presidency, not only because the right of precedence belongs to the Ordinary (can. 370), but also and mainly on account of the Ordinary's superior dignity and power. By appointing deans the Ordinary has not lost or curtailed his power over the entire diocese. Hence the "*debet*" must be understood with due subordination to the legitimate authority. The bishop should, as a rule, leave the presidency to the deans.

Pastors
(Can. 451–470)

It has already been remarked that bishops are obliged to divide their dioceses into parishes and entrust these to priests, called pastors, who exercise the care of souls under the authority of the local Ordinary. Upon the Ordinary, therefore, devolves the right and duty to appoint pastors, and to watch over their conduct. The Ordinary may also grant exemption from parish organization.

1. *The Appointment of Pastors*

With the exception of parishes reserved to the Holy See, the right of appointing and investing parish priests belongs to the Ordinary of the diocese. All contrary customs are rejected by the Code, with due regard, however, to the privilege of election or nomination.

The Ordinary shall, first and above all, assure himself

as to the *qualifications* of the candidate. The law requires that a pastor shall be a priest of good moral character, endowed with knowledge, zeal for souls, prudence, and all the other virtues and qualities required either by common or particular law for the proper government of a parish.

Therefore, the Code earnestly admonishes Ordinaries of their strict obligation to confer vacant parishes only on those whom they deem fittest without personal favoritism.

In forming his judgment as to fitness of a candidate, the Ordinary should consider, not only learning, but also the other qualities that are necessary to govern a parish successfully.

Hence

(1) he shall not neglect to inspect the documents in the diocesan archives, if there are any, that have reference to the clergyman to be appointed, and, if he deems it expedient, shall prudently seek to obtain secret information, even from outside the diocese;

(2) he shall faithfully comply with can. 130, § 2 (concerning examinations);

(3) he shall subject the candidate to an examination in the presence of the synodal examiners; however, he may, with the consent of the examiners, dispense any priest from this examination who has distinguished himself in theology.

There should not be less than three examiners, and the Ordinary should subject to an examination all the candidates who are to be promoted to a parish, except in the case stated in can. 459, with regard to the examination in theology. However, in case of a promotion or transfer to another parish, the examination passed for obtaining the first parish will be sufficient. On the other hand,

neither the examination passed for the promotion to sacred orders (can. 996), nor the one to be made annually for the space of three years (can. 130), is sufficient, or a substitute for the examination to be passed for promotion to a parish, unless the examination made before ordination comprised all the questions concerning the administration of a parish.[7]

This mode of examination differs, to some extent at least, from that called *concursus*, which is twofold, special or *general*. The latter was proposed by the German bishops at the Vatican Council, and is held once a year for all candidates to be promoted to parishes, the subject-matter being chiefly knowledge, while the other qualities are to be examined into at the time a parish becomes vacant. The *special* concursus is the one described in the Constitution of Benedict XIV, *"Cum illud,"* which was adopted by the Third Plenary Council of Baltimore for all *irremovable rectors*. Since the Code prescribes this mode, and consequently does not abolish the conciliar decree, this Constitution must be followed when an irremovable parish is to be filled. Its substance is:

(1) When a parish becomes vacant, the bishop shall, by a public edict, fix a suitable day for the holding of the competitive examination, at the same time notifying all who wish to make the concursus, that they must, within this time and before the day set apart for the concursus, file with the diocesan chancellor judicial or extra-judicial testimonials of their fitness, merits, qualifications, etc. After the expiration of this time, no testimonial or document of any kind can be received.

(2) The chancellor must draw up a written summary or synopsis of all the documents or testimonials presented

[7] Pont. Comm., Nov. 24, 1920 (*A. Ap. S.*, XI, 574).

by the various candidates, give one copy of this synopsis to the bishop, and one to each of the examiners, who in approving candidates after the examination must take into account, not merely their learning, but also their other merits and qualifications.

(3) In case a rejected competitor appeals either *a mala relatione examinatorum* or *ab irrationabili iudicio episcopi,* he must produce before the judge of appeal all the acts or records of the examination held in the first instance, which must be given him for that purpose by the chancellor. The judge *ad quem* must pronounce his decision solely and exclusively on the strength of the records or acts of the first concursus. Hence he cannot order any new concursus, nor receive any documents or testimonials other than those contained in the acts of the first instance.

(4) If the judge *ad quem* pronounces sentence in conformity with the appointment of the Ordinary, that is, in every respect against the appellant and in favor of the competitor appointed by the bishop, no further appeal is allowed, and the controversy becomes *res iudicata.* But if he reverses the action of the Ordinary, the competitor appointed by the bishop can appeal to the higher judge, whose sentence shall be final and unappealable.

(5) The concursus itself must be held in the following manner:

(a) The *same questions* must be proposed to all competitors, as also the same case (moral, liturgical, canonical, pastoral) and the same gospel text upon which they must compose a short sermon; all these must be dictated at one and the same time, and the same length of time must be allowed for the answers.

(b) All must sit in the *same room,* and no one be allowed to leave before he has completed his composition.

(c) They must *write the answers* in Latin, in their own

hand, and sign them. The sermon may be composed in the vernacular.

(d) All answers, as well as the sermon, as soon as offered, must be *signed* by the presiding chancellor, the examiners and the bishop or his vicar, if the latter was present at the examination.

(e) The *judgment* as to the sufficiency of the answers must be passed by the examiners *at the place of examination,* and must include a verdict on each candidate's conduct, virtues, and prudence. But the examiners must give only an objective statement as to the ability of the candidate, and leave the judgment as to the greater or lesser degree of fitness to the bishop.

In the U. S., according to the Third Plenary Council of Baltimore (n. 36, n. 43), only those priests can be admitted to the concursus who have been laudably engaged in the sacred ministry for at least ten years in the diocese, and within that time have given proof of their ability to govern a parish spiritually and temporally, either in the capacity of simple rectors, or in some other way.

The first appointment to a newly created irremovable parish may be made by the bishop without a concursus.

2. *Different Kinds of Pastors*

The Code distinguishes various kinds of pastors, according to the office, the nature of parishes, and the holders thereof.

1. As to the *office,* pastors are priests who govern a parish or a quasi-parish, which latter is a congregation of the faithful existing in Apostolic vicariates and prefectures (can. 216, § 3). There are vicars who are endowed with full parochial rights, *i. e.*, who have actual charge of a parish, while the habitual right is vested in a chapter or

monastery, or who exercise parochial functions because of the vacancy of a parish or the total inability of the incumbent.

2. As regards the *nature of a parish,* it may be incorporated or not incorporated with a religious corporation; hence the distinction between habitual and actual pastors. All *pleno iure* incorporations must be made by the Apostolic See. Parishes incorporated *pleno iure* are those which belong to ecclesiastical institutes in temporal and spiritual matters, while parishes *semipleno iure* incorporated are controlled by an ecclesiastical body, either as to temporalities only, or as to the spiritual administration only. The distinction between *removable* and *irremovable* parishes is based on the more or less permanent character of the incumbent. However, it is but fair to say that this permanency has been considerably modified, first by the *"Maxima cura"* (1910), and now by the Code, which says (can. 454) that a priest who is placed over a parish as rector should be permanent. This permanency does not, however, imply that he cannot be removed according to the law.

All parish priests are not permanent in the same degree; the irremovable rectors are permanent in a higher, the removable rectors in a lower degree.

Irremovable cannot be converted into movable parishes without an Apostolic indult, whereas removable parishes may, with the advice of the cathedral chapter, be declared irremovable by the bishop, but not by the vicar-capitular. All newly erected parishes are irremovable, unless the bishop is compelled by special circumstances of place or person to declare them removable.

3. With regard to the *holding of parishes,* they are either *secular* or *religious,* according as they are governed by secular or religious priests. What was said above

concerning incorporation *pleno iure* need not be repeated here. But we may add that the parties concerned in such a transaction should clearly designate the boundary lines of the parish to be handed over to religious and carefully agree on all conditions, so that no conflict may arise. Both the bishop and the religious superior should sign the document and forward it to the S. Congregation of Religious, who will deal with the S. C. of the Council concerning the matter. The document signed by the Roman authorities should be duplicated, so that the diocese as well as the religious institute may have a copy. If the Apostolic See unites a parish with a religious house only *quoad temporalia,* the religious receive the material benefit thereof, but the superior must present to the bishop for canonical institution a *secular* priest, to whom the necessary support or salary must be assigned. On the other hand, if a parish is incorporated with a religious community *pleno iure* by the Holy See, the religious superior may designate one of his own subjects to take charge; but the local Ordinary has the right to subject the appointee to an examination and to give him the canonical institution (can. 1425).

It may be added that while the Code does not forbid the local Ordinary to entrust a religious community with the temporary administration of parishes, it does not wish to see this made the rule. Secular benefices are intended for the secular clergy. Can. 606, § 2, moreover, plainly states that religious are not allowed to remain outside their houses for more than six months, except for purposes of study; if they wish to stay longer, they need a papal indult. Hence if they hold a parish that is not their own by virtue of *pleno iure* incorporation, they certainly need a papal indult to remain there, outside their religious house, for more than six months, nor could any

religious be obliged to stay in such a parish by virtue of obedience.

Quasi-pastors, viz., those of the secular clergy who are under the S. C. of the Propaganda, are appointed by the Apostolic vicar or prefect, after hearing his counsellors (can. 302).

3. *Fulfilment of Pastoral Obligations*

The local Ordinary is mainly responsible for the fulfilment of the duties incumbent on the pastors of his diocese with regard to the exercise of parochial rights, the administration of the Sacraments in accordance with the law and ritual, the office of preaching and teaching the catechism, the care of the sick, and charitable works. There are three duties which demand his special attention.

a) *As to residence.* Every pastor is obliged to reside in a parish house near his church. However, the Ordinary of the diocese may, for a just reason, allow him to live elsewhere, provided his home is not so far away from the parish church that the performance of his pastoral duties would suffer therefrom.

The pastor may take a two months' vacation every year, either continuous or interrupted, provided there be no grave cause which, in the judgment of the Ordinary, would require either a prolongation or shortening of this term.

The days of the yearly retreat (can. 126) are not included in the two months' vacation.

If a parish priest wishes to be absent from home for more than one week, he must have a legitimate excuse and the Ordinary's written permission, and, besides, provide a substitute approved by the Ordinary. If the

parish priest is a religious, he needs in addition, the permission of his superior, and his substitute must be acceptable to both the Ordinary and the superior.

Should a parish priest, for a grave reason, be suddenly called away and compelled to be absent from home for more than a week, he must inform his Ordinary as soon as possible in writing, stating the reason for his leave and the name of his substitute, and abide by the Ordinary's commands.

Even during a shorter absence the pastor must provide for the wants of the faithful committed to his care, especially if peculiar circumstances require it.

b) As to the application of the Mass *pro populo.* The Code rules that a parish priest is obliged to apply the Mass for his people, the same as a bishop (can. 339); a quasi-pastor must follow the rules laid down in can. 306.

A pastor who governs two parishes which are united *aeque principaliter,* or one as his own and the other as administrator, is obliged to apply but one Mass for the people.

The *Ordinary* of the diocese may, for a just reason, grant permission to any parish priest to apply the Mass for the people on another than the prescribed day.

A pastor should say the Mass for the people in the parish church, unless circumstances compel him to say it elsewhere.

A pastor who is legitimately absent from home may either himself apply the Mass for the people at his actual place of abode, or have it said at home by a substitute.

In dioceses which have no canonically erected parishes, there is no obligation to apply the Mass *pro populo,* nor is the bishop entitled to impose this duty, either by precept or synodal enactment, on pastors who are administering parishes which are not canonically erected.

To do so would be acting not only beyond, but against, the law and its authentic interpretation.

c) As to *parish books.* These should be examined at the time of the canonical visitation, and, at the end of each year, a copy of all parish books, except the *status animarum,* sent to the diocesan chancery. The parish seal and the archives are also to be inspected at the diocesan visitation (can. 470).

4. *Exemption from Parish Organization*

The bishop for just and weighty reasons may grant quasi-exemption from parochial rights and care to religious families and pious houses. This power is a reminder of a time when the bishop was considered the parish priest of the whole diocese. The ruling of the Code is not entirely new, for the semi-public oratories of brotherhoods and sisterhoods have long enjoyed certain privileges which curtailed the pastor's rights. However, in these general terms the principle laid down in § 2 of canon 464 is of comparatively recent date. After the division of dioceses into parishes, the bishop was no longer considered the *parochus* of the whole diocese, but only of the cathedral. Hence the Code binds the bishop to *"just and weighty reasons"* for withdrawing any one from the care of the pastor. Such reasons would be: the merits of a religious community and their distinguished work for the common welfare; peace and tranquillity from vexations by the parish priest; suspicion or undue interference by the pastor with the internal and domestic affairs of the community, etc. The parish priest may appeal to the Holy See, but he has no right to demand the bishop's reasons, for the bishop is not responsible to a pastor. We may add that the fact that the canon names

the *bishop,* not the *Ordinary,* appears to exclude vicars-general or vicars-capitular from granting this exemption.

It is evident that the law here intends only the exemption of such religious houses as would otherwise not enjoy this favor. The houses of regulars and other exempt religious are by law free from parish organization.

Concerning the *removal* of pastors, we refer to the procedure laid down by the Code, which is treated *infra,* under the judiciary powers of Ordinaries. Here we will only add the rule to be observed in removing religious pastors.

Parish priests who belong to a religious community may, as far as their person is concerned, be removed at will and with equal right, either by the *Ordinarius loci,* after having notified the religious superior, or by the religious superior, after having notified the *Ordinarius loci.* Neither is bound to state, much less to prove, the reasons for his proceeding to the other. Recourse *in devolutivo* to the Holy See is, however, open to both. (Can. 454, § 5).

Assistants (or Curates) and Rectors (Can. 471–486)

The Code distinguishes five classes of assistants.

1. The so-called *vicars,* or actual pastors assigned to incorporated parishes, as mentioned above. Note that the bishop has no right to refuse canonical institution to a religious who has been found fit to rule a parish, although he may remove him, as per can. 454, § 5, quoted above.

2. Another class of assistants are those styled *oeconomi,* or temporary administrators of vacant parishes. They are to be appointed *quam primum,* which means three days after the vacancy has become known to the bishop. If the administrator is a religious, the consent of the reli-

gious superior is required. Before the administrator is appointed, unless otherwise provided, the assistant priest shall rule the parish, and if there are several assistants, the first in rank, or if all are equal in rank, the senior assistant, shall assume the office of pastor *ad interim*. If there are no assistant priests, the nearest parish priest shall assume the office. In parishes entrusted to religious the superior of the house shall act in the same capacity. The Ordinary of the diocese shall, in due time, either at or outside the synod, determine which is to be considered the nearest parish. Whoever has assumed the *ad interim* administration of a parish, must inform the Ordinary of the diocese of the vacancy.

The administrator shall hand over the key of the archives to the new pastor, or to the new administrator, in the presence of the rural dean, or of a priest appointed by the Ordinary, as also the inventory of the books and documents and other things pertaining to the parish, and render an account of the receipts and expenses during his administration.

3. The third class is that of *substitutes*. A substitute is a priest who takes the place of an absent pastor, or of one who has been deprived of his parish and has appealed to Rome (can. 1923, § 2). He has charge of whatever pertains to the cure of souls, unless the Ordinary or the parish priest have made reservations.

4. The fourth class is that of *assistants* given to *disabled pastors*. They are freely assigned by the local Ordinary, who may also determine their faculties in the letter of appointment.

5. The fifth class is that of *assistants proper*, or *curates*, (*coöperatores*), who are given on account of the size of a parish or for other reasons. They are appointed by the Ordinary, who, however, is obliged first to hear the

pastor, although he is not bound to follow his opinion. Their faculties are variously determined.

The *removal* of assistants of the last four classes depends entirely on the will of the bishop. The vicar-capitular may also remove them at random; but the vicar-general needs a special mandate for this purpose. *Religious* assistants are removed like pastors, as per can. 454, § 5, quoted above.

Concerning *rectors, i. e.,* priests assigned to churches which are neither parishes nor capitular nor religious churches, the Code gives full sway to the local Ordinary as to appointment, removal, and regulation of service. It also rules that if in the Ordinary's judgment a church with a rector is so far distant from the parish church that the parishioners cannot frequent the parish church except with great inconvenience, (1) the Ordinary can, under threat of heavy penalties, command the rector to hold service at hours more convenient for the people, to announce holydays and fast days, give catechetical instructions, and explain the Gospel; (2) the pastor can take the Blessed Sacrament, if it is reserved there according to can. 1265, and administer it to the sick.

POWERS OF ORDINARIES WITH REGARD TO RELIGIOUS

(Can. 487–672)

Here we will merely outline the rules laid down by the Code, referring the reader who desires more detailed information to the third volume of our *Commentary.*

1. As to Establishing Religious Institutes

The religious state, that is, the firmly established manner of living in a community, by which the faithful under-

take to observe, not only the ordinary precepts, but also the evangelical counsels, by means of the vows of obedience, chastity, and poverty, must be held in high esteem by all (can. 487). If one of these three vows is not taken by the members of an institute, the latter does not canonically belong to the religious state, but is a pious association.

Religious institutes are called papal or pontifical if they have obtained at least the *decretum laudis.* If this decree has not yet been granted by the S. Congregation of Religious, the institute is a diocesan one, even though it may be spread over several dioceses.

Only the bishop can establish religious congregations; the vicar-general, even if especially commissioned, lacks this power. Bishops, however, must consult the Apostolic See before establishing new religious congregations.

A bishop will do well, before founding a new religious institute, to study the new *"Normae,"* where it is stated, with regard to the preliminary steps, that, when he is about to establish a new congregation with simple vows, he shall consult the S. Congregation of Religious in accordance with can. 492, § 1. He shall explain in particular, who is the promoter of the new congregation, what is his character, and what are the reasons why he wishes to erect it; the name and title by which the congregation is to be known; the form, color, and material of the habit to be worn by the novices and the professed members; the number and nature of the works to be undertaken by the Congregation; how it expects to maintain itself; whether or not there are similar congregations in the diocese, and by what means they subsist.

When permission has been received from Rome, the new congregation may be founded. A congregation thus

founded, however, will be under episcopal jurisdiction, and consequently, even though it may, in time, spread to other dioceses, as long as it lacks pontifical approval or praise (as required by can. 492, § 2), it will remain a diocesan institute, entirely subject to the jurisdiction of the (local) Ordinary, according to law.

2. Concerning the Government of Non-Exempt Institutes

a) Election

In *congregations of women, the election of a mother general* shall be *presided* over by the Ordinary of the place where the election is held, or by his delegate; and in the case of a diocesan congregation, the Ordinary has full power to confirm or annul the result of the election, as his conscience dictates (can. 506, § 4).

The Ordinary, or his delegate, is not allowed to enter the enclosure of monasteries of *nuns* (can. 506, § 2). This rule affects papal enclosures only; and consequently, where papal enclosure does not exist, the Ordinary is not bound by it. As to communities of *men,* even though non-exempt, the Code does not call for the presence of the local Ordinary at elections, but supposes that these elect like a chapter (can. 507, § 1).

b) Canonical Visitation

The local Ordinary must visit every *five years,* either in person or by delegate: (a) all the houses of *lay congregations,* (b) all the houses of men or women of *diocesan congregations,* and (c) all the houses of clerical congregations approved by the Holy See.

c) *Temporal Affairs*

As to rendering and *demanding accounts* of temporal administration, the local Ordinary has the *right* of enquiring into the economic state of every religious house enjoying *diocesan* approval (can. 535, § 3, n. 1).

Concerning *papal congregations of women,* the account to be given to the local Ordinaries concerns the dowries and administration of the funds and bequests referred to in can. 533, § 1, n. 3, 4 (can. 535, § 2, § 3, n. 2).

Concerning *papal congregations of men,* the Ordinary has no right to demand an account, except for the funds and bequests referred to in can. 533, § 1, n. 3, and for parish money as per can. 533, § 1, n. 4 (see can. 618).

As to *begging,* the Code rules that mendicants who are regulars may beg in the diocese with the permission of their religious superior. If they wish to beg outside their own diocese, however, they need the written permission of the Ordinary in whose diocese they wish to beg. Ordinaries, especially of adjoining dioceses, should not refuse or withdraw such a license, except for weighty and urgent reasons, if the religious house cannot subsist on the alms gathered in the diocese in which it is situated.

Non-mendicant orders and congregations need a papal indult and the written permission of the local Ordinary for begging in his diocese.

Diocesan institutes need the written permission of the Ordinary of the diocese in which their house is located, as well as that of the Ordinary in whose diocese they wish to beg. This permission should be granted only in case of real need. *Orientals* need an authentic and recently

issued document of the S. C. for the Oriental Church for collecting alms. If religious seeking alms do not conduct themselves properly, the Ordinary of the diocese may proceed against them according to law (can. 616).

d) The Sacraments

The *right of solemnly conferring Baptism* is among the strictly parochial rights (can. 462). The place for administering solemn Baptism is the parish church or public oratory (can. 773). Consequently, as a rule, the chaplains of congregations which have only a semi-public oratory are not allowed to confer Baptism there. Besides, since the pastor is strictly entitled to confer Baptism, the chaplain has no right to do so. This should be noted with regard to hospitals or academies. Only where can. 464, § 2 (exemption from parish organization) is verified, the pastor has to waive his claim. But even then the Ordinary must give permission to confer Baptism in a semi-public oratory.

To this it may be objected that can. 776, § 1, n. 2 admits solemn Baptism in private houses. The answer is that here, too, the Ordinary must give his consent, and can give it only in extraordinary cases, and for a just and reasonable cause. This does not imply a habitual permission, otherwise the parochial rights might become a mere mockery. Ingenious reasons are sometimes brought forward. If can. 464, § 2 is not applicable, and no express permission has been granted, only *private* Baptism (in case of necessity) can be conferred in such houses or chapels. Nor may the baptismal water be carried away from the parish church, in order to confer solemn Bap-

tism in a semi-public oratory; for it is not the quality of the water, but the place and minister that distinguish solemn from private Baptism.

Religious should not be *sponsors* except in case of necessity (can. 766, n. 4).

Confirmation may be administered in any chapel of religious, even though they be exempt (can. 792); but the right to do so is reserved to the diocesan Ordinary. Therefore, if a strange bishop would confirm in a chapel of religious, the consent of the local Ordinary would have to be obtained, or reasonably presumed, and if the chapel belongs to exempt religious, also the consent of the religious superior (can. 337, § 1).

Concerning the *Holy Eucharist,* the following rules may be laid down:

a) As to the admission of *strange priests* to say Mass in chapels of religious, the chaplain shall consult can. 804, concerning the *"celebret"* or personal acquaintance.

b) Religious and others present are entitled to receive *Holy Communion* at the midnight Mass on Christmas day in the chapels of religious (can. 821, § 3).

Concerning the *communion of sick lay religious* and other persons living in religious houses, see can. 514, § 3; the right is, *per se,* reserved to the pastor (cf. also can. 848). In non-exempt clerical congregations it belongs to the superior (*ibid.,* § 1). If outsiders (for instance, pupils, patients, servants) receive their Easter Communion in the chapel of a religious institute, they should inform their pastor of the fact (can. 859, § 3).

c) As to the *reservation of the Blessed Sacrament,* can. 1265, § 1, n. 2 rules that with the permission of the local Ordinary it may be reserved only in the main public or semi-public oratory of religious houses; but nowhere

else, not even in the choir chapel of nuns (can. 1267). The *key to the tabernacle* should be carefully guarded, and the priest (chaplain) is responsible for its safekeeping (can. 1269, § 4). However, this does not mean that the "Sister Sacristan" may not be allowed to keep it, as is customary almost everywhere; but only that the ultimate responsibility rests on the priest.

d) The *exposition,* private and public, of the Blessed Sacrament is regulated by can. 1274.

Concerning the *Sacrament of Penance,* we refer to canons 518–528 and can. 876. A decision of the Pontifical Commission for the Authentic Interpretation says that can. 522 is to be understood in the sense that confession need not necessarily be made in a church or chapel, but may be made in any place lawfully appointed for hearing confessions of women[8] (see can. 909 f).

With regard to *Extreme Unction,* can. 514 must be compared with can. 462, n. 2, which latter reserves the right to the pastor, unless can. 464, § 2 takes effect. But can. 848, § 2 should also be consulted for cases of necessity.

Concerning *Holy Orders* to be received by members of Congregations with simple vows, the following rules should be observed:

a) *Dimissorial* letters must be issued by the higher superior to members of *exempt* congregations, like the Redemptorists, etc.; but to members with simple (temporary) vows, for tonsure and Minor Orders only. Members of congregations which are *not exempt,* need *litteræ dimissoriæ* from their own bishop for major orders (can. 964). The bishop to whom the religious superior

[8] Nov. 24, 1920 (*A. Ap. S.,* XII, 575).

must direct the dimissorial letters is the bishop in whose diocese the religious house of which the ordinand is a member (can. 965) is situated.

b) The *titulus ordinationis* for religious with perpetual vows is that of *mensae communis* or *congregationis,* or else one of the other canonical or acknowledged titles (can. 982).

c) Irregularity *ex defectu natalium* is *not* taken away by the profession of simple vows (can. 984, n. 1).

d) As to *testimonials,* all religious are subject to the common law governing the secular clergy (can. 993).

e) The same is to be said with regard to the *examination* to be taken before ordination (can. 996 f).

f) The *publication* of the ordination of religious must not be made in the churches mentioned under can. 998.

g) Unless a privilege has been obtained, the *tempora ordinationum* must be observed by all religious, contrary custom being reprobated (can. 1006).

Concerning *Matrimony,* observe that the Ordinary should not grant permission to have it celebrated in churches or oratories of *women religious* without urgent necessity (can. 1109, § 2).

As to *sacred places,* the law forbids the erection of a church of religious women as a *parish church* (can. 609, § 2).

The *consecration* as well as *blessing* of churches or oratories belonging to non-exempt Congregations pertains to the diocesan bishop (can. 1155, f.). Besides, can. 1162 demands a special permission from the local Ordinary for the erection of a church or public oratory, even after the consent to establish a religious house has been given. *Semi-public* oratories can be erected only with the permission of the Ordinary, who must first inspect the place,

according to can. 1192. He *may* forbid certain functions to be held in semi-public oratories (can. 1193). He should also watch that no conflict ensues with the parochial functions (can. 609, § 3).

Concerning the *burial of religious,* cans. 1221 and 1230 must be observed. The latter grants the right to bury non-exempt religious to the *pastor* in whose parish the religious house is situated, unless exemption has been granted to the religious by the local Ordinary (can. 464, § 2). If exemption has been properly accorded, the chaplain of the respective house is entitled to perform the funeral service. Can. 1222 provides that guests, students, or sick persons, who have lived in a religious house, or who die in a hospital, are to be buried like secular persons, and hence the chaplain of the religious house, even though the house is exempted by the local Ordinary, has no right to bury such persons (but see can. 1216–1218).

As to *sacred processions,* can. 1291 provides that *male religious* must be present at the *Corpus Christi* procession. From parish and other churches, including public oratories, processions may be held during the *octave* of Corpus Christi. Of semi-public oratories nothing is said, and consequently, no processions can be held from them without the special permission of the Ordinary, and can. 1293 must be applied. Can. 1291, § 1 does not forbid *Sisters* to march in the Corpus Christi procession.

Concerning *preaching,* can. 1334 says that even exempt religious may be called upon to help in giving catechetical instructions to the people. The faculties for preaching are granted to non-exempt religious by the Ordinary in whose diocese the preaching is done (can. 1338). This faculty is required every time they wish to preach in a strange diocese (can. 1341, § 1). Religious who are

pastors must obey the orders of the local Ordinary also with regard to missions (can. 1349).

With regard to the *censorship of books,* all non-exempt religious must refrain from reading books forbidden by the local Ordinary (can. 1395); and also ask of him the permission necessary to read forbidden books (can. 1402, § 1), and the imprimatur for any kind of books (can. 1386, § 1).

e) Penalties

The clerical members (confessors) do not enjoy the privileges of regulars to absolve from cases reserved by law to the bishops. To absolve from these cases they need special faculties. In practice they had best follow the formulary issued for the respective diocese. To the reserved cases belong, besides those reserved with regard to all the faithful, *apostasy from religion, i. e.,* from a non-exempt institute (can. 2385), and marriage contracted by religious (can. 2388).

The Ordinary may proceed with ecclesiastical penalties against religious and their superiors in the following cases:

(a) if community life is seriously violated, can. 2389;

(b) if the law concerning dimissorials is rashly violated, can. 2410;

(c) if the law concerning testimonials is violated, can. 2411;

(d) if the law concerning alienation, investment of dowries, and examination of postulants and novices is transgressed, can. 2347, 2412;

(e) if the rules concerning visitation are set aside, can. 2413;

(f) if liberty of conscience concerning confession is violated by superiors, can. 2414.

f) Confessor and Chaplain

The *confessor* is appointed by the local Ordinary for a term of three years, but may be reappointed for another, and even a third term, according to can. 526. After his term has elapsed, he cannot be reappointed unless a year has expired since his last term, nor can an ordinary confessor be appointed extraordinary confessor except after a year has passed (can. 524, § 2).

The *extraordinary confessor* may hold his office as long as it pleases the local Ordinary; he may also be appointed ordinary confessor immediately after or during his office as extraordinary confessor (can. 524, § 2).

The confessor of religious communities *cannot dispense* from the law of fasting or abstinence or the observance of feasts, can. 1245. However, if the Bishop wishes to grant him that power, he is at liberty to do so, and it is generally done. Besides, the confessor may, according to the rules of moral theology, declare, in individual cases, that the law of fasting or abstinence does not bind. Lastly, religious communities may make use of the diocesan mitigations or regulations, unless their constitutions prevent them (can. 1253).

Confessors of religious, ordinary as well as extraordinary, *are strictly forbidden to meddle in the internal or external government of the community* (can. 524, § 3), for this would be tantamount to a usurpation of jurisdiction, which is denied, except in the confessional. Besides they should also heed can. 2352, which threatens excommunication for those who persuade or compel any person to enter the religious state.

The confessor may *enter the enclosure* in case of necessity, *i. e.*, to hear the confessions of sick Sisters; but

he should be always accompanied by two Sisters, and be dressed in surplice and stole in the sickroom.

A chaplain is appointed by the local Ordinary for all non-exempt religious communities; in exempt communities, the religious superior designates or presents a priest to the local Ordinary, who must grant him the necessary faculties for saying Mass and preaching (can. 529). Other faculties cannot be claimed by him, unless the Bishop should choose to delegate him as spiritual director with extended powers. However, not even the Ordinary is allowed to change anything in the Constitutions approved by the Holy See (can. 618, § 2, n. 1). Diocesan institutes have their constitutions approved by the local Ordinary, who should put them into execution and test them by observance. The chaplain or spiritual director must leave the internal and external government of the community to the religious. His office is to say Mass, administer Holy Communion, assist the sick (except in what is reserved to the confessor), and preach the Word of God, or give instructions. As to the Viaticum, Extreme Unction, and burial, see can. 514, 1221, 1280, § 5. Unless exemption is granted according to can. 464, § 2, the chaplain is not entitled to administer either the Viaticum or Extreme Unction, or to perform the funeral rites. The chaplain, too, should heed can. 2352 and not preach or instruct academy girls in a fashion that would almost amount to compelling them to enter the religious state.

Here a remark concerning *spiritual directors* may not be superfluous. Formerly the S. Congregation refused to acknowledge any spiritual director over religious congregations endowed with the decree of commendation, or spread over more than one diocese. Notwithstanding this prohibition it was found necessary that the bishop

should appoint such a director for the religious congregations of his diocese. This was admitted, provided the bishop acted according to the "*Conditae*," of 1900, which was the norm for such communities. Now he must follow the Code, beyond which he is not allowed to go. Since the bishop cannot command in virtue of the vow of obedience, neither can the director. We also draw attention to can. 500, § 3.

g) The Exploratio Voluntatis

Can. 552, § 1 calls for a threefold examination (*exploratio voluntatis*), *viz.*, one before a girl is admitted to the novitiate, another before the temporary, and a third before the perpetual profession. Now there are sisterhoods who put their candidates through two periods of three years each of temporal vows before they take perpetual vows. The text of the Code is rather explicit regarding the three examinations: before the novitiate, before temporary profession, and before perpetual profession; but whether the intermediate temporary profession also requires a canonical examination is not stated. We believe that intermediate examination in this case may safely be omitted, for the object of the law is accomplished by the threefold examination, and we do not do any violence to the text, which requires only three examinations; and, finally, the intermediate profession must be looked upon as an annual or a renewed profession, for which no examination is necessary. But, on the other hand, it is certain that the Ordinary is by no means entitled to make that examination before the temporary profession, to be pronounced after the first term of three years has elapsed and then omit the examination before the perpetual profession. For the latter examination is strictly re-

quired; § 2 of the same can. 552 cannot be understood in any other way. For the words: "then the aspirant may be admitted to the novitiate, or, if already a novice, to profession," must be interpreted according to the express text of § 1.

h) *Enclosure*

The Ordinary must diligently watch over the enclosure of nuns, even those subject to regulars. In cases of imminent danger the Ordinary should recognize or verify or at least be told the reason of this danger. The enclosure called *episcopal*, which is imposed on religious with simple vows only, may, in particular circumstances and for grave reasons, be safeguarded by censures. The Ordinary shall also see to it that the Sisters do not leave the house singly, without a companion (can. 601, 603, 604).

i) *The Dismissal of Religious*

The Code distinguishes between the dismissal of religious with temporary vows and that of religious with perpetual vows.

1. If a *nun* with temporary vows is to be dismissed, the Ordinary may dismiss her after the superioress with her counsellors has given a written attestation of the motives alleged for the dismissal.

In *diocesan* congregations the right of dismissing a Sister with temporary vows belongs to the Ordinary in whose diocese the house is located. However, he should not act without the knowledge of the superioress or against her just opposition. Besides, in order to proceed to dismissal licitly, it is required that the reasons or mo-

tives be grave, and that they be made known to the religious. If the religious appeals to Rome, the recourse has *suspensive* effect, which means that the religious cannot validly be dismissed, until the S. Congregation of Religious has decided the case against him or her.

2. When a religious with *perpetual vows* is to be dismissed, he or she must have been convicted of at least three offences, twice admonished, and proved incorrigible. Then, in *diocesan* institutes, the whole matter must be referred to the Ordinary in whose diocese the religious house of the professed is located. He must weigh the reasons or motives for dismissal, and then issue the decree; but also heed an eventual appeal. If a *nun* is to be dismissed, the local Ordinary shall transmit all the acts and documents to Rome to await the judgment of the Holy See. In *papal* institutes the superior of the religious must refer the whole matter to the S. C. of Religious.

In case of *grave external scandal,* or very serious injury threatening the community, the religious may be dismissed immediately by the higher superior with the consent of the council, or even by the local superior with the *consent* of the council *and* of the *local Ordinary*, if there be danger in delay and there is no time for recourse to the higher superior.

3. Suppression and Exemption

Any religious *congregation,* even though diocesan only, can be *suppressed* by the Holy See, and by it alone. To the same authority is reserved the suppression of a *province.* The disposal of the property of an extinct province belongs to the General Chapter or Superior-General with his council. A religious *house* of a non-

exempt religious congregation *approved by the Holy See* can be suppressed by the Superior-General with the consent of the local Ordinary. A religious house of a diocesan congregation can be suppressed by the local Ordinary (can. 408). What if a house of so-called *nuns*[9] is to be suppressed? Can. 493 gives the answer: an institute, even when only diocesan (as most of our Benedictine foundations are), once legitimately established, though it possess only one house, cannot be suppressed except by the *Holy See*. Recourse to the S. Congregation of Religious is, of course, always open to both the bishop and the religious.

Exemption from the jurisdiction of the local Ordinary is granted only to regulars (can. 615); all other religious institutes, papal and diocesan, are subject to the local Ordinary, unless the Apostolic See has granted the privilege of exemption to an institute which does not belong to the class of regulars (can. 500, § 1). The *local Ordinary himself* may, for good reasons, grant exemption from the *parish organization* to communities which would otherwise form part and parcel of a parish, and therefore be subject to the pastor (can. 464, § 2).

4. RELIGIOUS ORDINARIES

As stated above, the higher superiors, (*superiores maiores*) of exempt clerical institutes go by the name of Ordinaries (can. 198). Their power, granted by the Sovereign Pontiff, is called *quasi-episcopal*, because it is similar to that of bishops, and, except in the matter of

[9] Those, namely, who, by virtue of their original rule or constitution, should pronounce solemn, but in fact have only simple vows.

orders, equal to it concerning their own subjects. Hence these superiors and their subjects are exempt from the jurisdiction of the local Ordinary, except in the cases mentioned in the Code (can. 615). Leaving aside their dominative or domestic power, we shall point out briefly the main features of their external jurisdiction and administration, premising a few words about qualities and obligations.

1. *Qualities and Obligations*

a) The Code (can. 504) demands that only those who have been members of the same institute for at least ten years from the date of their first or temporary profession may be elected higher superiors. They must be of legitimate birth and must have completed at least the thirtieth year of age. A superior general must have completed his fortieth year. These conditions affect the validity of the election. If one of them is missing, postulation takes place. Election or postulation is exclusively effected by the religious themselves.

b) The office of a religious superior, as a rule, is *temporary*. Only if the Constitutions or rules admit perpetual superiors, may they hold their office for life (can. 505). Here there is a gap in the Code, for it has not provided for cases which imperatively demand that a superior, whether disabled or proved incapable of administration and goverment, be removed or made to resign. Hence the Constitutions should make the proper provisions.

c) The superiors are obliged to see to it that the decrees issued by the Holy See for religious be made known to their subjects and put into effect (can. 509).

d) Religious superiors shall reside in their respective houses, which they are not allowed to leave except as far as the Constitutions permit (can. 508).

e) The abbot primate, the superior of every monastic congregation, and the superior general of every pontifical institute, must send a written report on the status of his community to the Holy See *every five years,* or if the Constitution prescribes it, oftener. This report must be signed by the respective superior and his counsellors; and when the congregation is one of women, also by the Ordinary in whose diocese the general superioress with her counsel resides.

f) Religious superiors are strictly forbidden to handle or interfere with cases belonging to the *Holy Office* (can. 501, § 2). These concern:

(a) Whatever belongs to heresy and schism, as well as the persons (bishops, inquisitors) who proceed against these crimes, if they are impeded or disturbed in prosecuting the guilty;

(b) Whatever savors of divination, witchcraft, sorcery, superstition, astrology, etc.;

(c) Whatever touches the sacredness of the confessional;

(d) Persons, lay or clerical, who, though not priests, attempt to say Mass or hear confessions.

(e) The Code adds another, *viz.*, religious who become members of a Masonic sect or similar society. They must be denounced to the Holy Office. These and similar crimes, then, religious superiors are not to prosecute, either criminally, or judiciarily, by summoning witnesses or inflicting penalties, or in any way that would savor of inquisitorial procedure, but must refer to the Holy Office if proof is in their hands. They are not

obliged to act on mere suspicion or rumor, because prudence and charity require an investigation; and they may not administer fraternal correction or admonition. The culprits may be reported to the Ordinary or directly to the Holy Office.

Can. 511 provides that the *higher superiors* of religious orders as well as congregations, whom the constitutions entrust with the office of visitors, should at stated times, as prescribed in the constitutions, *visit all the houses subject to them.* If they are lawfully prevented from performing this duty personally, they may send others in their stead. The *questions* which the visitor should ask, according to approved authors, are chiefly the following:

(a) About the *regular discipline*, observance of vows, rules and constitutions, life in common and spiritual exercises in the choir and elsewhere, fast and abstinence, fraternal charity;

(b) Concerning the *duties* to be performed by the superiors and officials, teachers and employers towards their subjects and inferiors, about conferences and chapters of faults, schools and instructions, reading of the decrees prescribed, observance of laws and customary rubrics;

(c) *Regarding temporal affairs,* especially Mass obligations, founded and manual, property and debts, method of bookkeeping, alienation, etc.

(d) The *honorary title of higher offices,* such as titular abbot, ex-provincial, etc., is allowed only to those who have once held such an office in their institute (can. 515).

(e) They are obliged to make the profession of faith before the chapter or the superior who appointed them (can. 1406 § 1, n. 9).

2. *Rights or Powers*

The powers of the superiors of regulars or exempt religious are determined partly by the Code and partly by the respective Constitutions. Here we are concerned only with the rights pointed out by law.

1) Concerning the *Sacraments:* (1) In regard to *baptism* they are not allowed to interfere with parochial rights. On the other hand they are obliged to send the names of their subjects who have been ordained subdeacons and of those who have made solemn vows, to the pastor who has baptized them (can. 1011, can. 576, § 2).

(2) With regard to Confirmation nothing need be said, since prelates regular, unless they are abbots *nullius* or Apostolic Vicars or Prefects, or have obtained a local Apostolic privilege, as, for instance, the abbots of Fulda once possessed, cannot confer this Sacrament.

(3) Respecting the *Holy Eucharist* the Code (can. 514) states: "In every clerical institute the superiors have the right and duty to administer, either themselves or through another, the Eucharistic Viaticum and Extreme Unction to sick professed members and novices and to others who dwell day and night in the religious house, either by reason of service, or education, or hospitality (*hospitii*) or sickness."

The higher superior may grant permission to say Mass outside a church or oratory, upon a consecrated altar stone, provided the place is decent (no bedroom) and the permission is granted for a just and reasonable cause, in extraordinary cases only, and not habitually (can. 822, § 4).

The higher superiors are responsible for the Masses

to be said on the religious and pious foundations entrusted to them, and for proper bookkeeping in this respect (can. 842–844).

(4) As to the Sacrament of Penance, the law rules that in exempt religious institutes of clerics delegated jurisdiction for hearing the confessions of those mentioned in can. 514 (see above) is to be given by their own superior, who may also grant such jurisdiction to secular priests or priests of another religious institute (can. 875). But religious superiors, even though convents of nuns are subject to them, *cannot* impart jurisdiction for hearing confessions of female religious, either nuns or Sisters, or novices (can. 876). The religious superior may, in case he has nuns subject to him, present a confessor to the Ordinary, who will then give jurisdiction to the one thus presented (can. 525).

Religious superiors should not, except for grave reasons, habitually hear their own subjects' confessions (can. 518). Neither are they allowed to impede their subjects from making use of can. 519, which permits them to go to confession to any priest approved by the local Ordinary.

(5) As to *Holy Orders*: Superiors of exempt religious institutes must give dimissorial letters to their subjects, in order that the *episcopus proprius* may licitly ordain them. The *episcopus proprius* is the one in whose diocese is situated the religious house of which the *ordinandus* is a member.

a) A governing abbot, though not an abbot *nullius*, may confer tonsure and minor orders on such as are subject to him by virtue of at least simple profession, provided the abbot himself is a priest and has lawfully received the abbatial blessing. For sacred orders, abbots

like other exempt prelates, must give *dimissorials,* which are at the same time testimonials that the candidate has made his religious profession, is a member of the religious house subject to the respective superior, has completed the required studies and complied with the other conditions demanded by law. The *titulus ordinationis* of exempt religious is that of religious profession (can. 964, 965, 982, 995). As to *tempora* and *interstitia,* religious must, by common law, obey the Code. However, since the privileges granted to regulars are not abolished or modified,—as far as we know,—these favors may still be applied to regulars. Superiors may prohibit their subjects from receiving higher orders (can. 970).

b) As to *Sacramentals,* it may be stated that consecrations (*ubi unctio intercedit*) cannot be performed by regular prelates, unless they have obtained a special privilege to that effect, nor can the bishop delegate them for such functions. But higher superiors may, either themselves or through a delegate, bless (can. 1155, 1156) and lay the cornerstones for their own churches (can. 1163), bless the *sacra supellex* for the use of their own churches and the churches of nuns subject to them (can. 1304), and *reconcile* desecrated churches, either consecrated or blessed, which belong to their institute (can. 1176, 2), *i. e.,* those incorporated *pleno iure.*

c) Concerning *preaching,* the prelates may grant the faculty, if the preaching is to be done to their own subjects only; but to preach to nuns, though subject to regulars, the local Ordinary must, besides, impart the faculty (can. 1338).

d) Religious superiors may grant permission to their subjects to *publish books,* but the imprimatur proper is

to be given by the Ordinary, according to canon 1385, § 3.

Exempt prelates may forbid their subjects to read certain books (can. 1395).

e) As to *offices or benefices*: Religious superiors may present one of their own to the local Ordinary for canonical institution, if the parish is *pleno iure* incorporated (can. 471, §2). He is removed as stated above.

Confessors of nuns subject to regulars are presented to the Ordinary, who imparts the jurisdiction; confessors of Sisters are appointed by the local Ordinary, who may choose from the secular or religious clergy (can. 524).

Chaplains for exempt houses are designated by the religious superiors (can. 529).

Higher superiors of exempt clerical orders may act as *notaries* in all ecclesiastical matters pertaining to their own institute (can. 503).

f) With regard to temporal affairs or the *right* to hold and *administer property,* they are independent with regard to religious property, but must administer it according to the Code (can. 531-537).

g) Superiors of exempt clerical institutes may *dispense from vows* not reserved and in favor of all those mentioned in can. 514. They may also, like pastors, dispense their own subjects and those mentioned in can. 514, from the law of fasting and abstinence.

h) Religious superiors are entitled to perform the *funeral rites* over their own religious and novices (can. 1221).

i) Concerning the penal laws, they are bound by the Code and their own Constitutions, but enjoy the same power over their subjects as the local Ordinary does over his.

5. *Powers of Ordinaries Concerning Confraternities*

To *erect or approve* societies which are to be recognized by the Church, and to enjoy the privileges and spiritual favors granted by her, belongs, aside from the Roman Pontiff, to the Ordinary of the diocese, with the exception of those societies whose institution is by Apostolic concession reserved to others.

Even in case a concession has been granted, the written consent of the Ordinary is required for the valid foundation of a society, unless the contrary is explicitly stated in the concession. The permission of the Ordinary to erect a religious house includes permission to establish in this house or the adjacent church any society that may be customary with the religious institute in question, even though it may not form part and parcel of the institute itself.

In virtue of their usual powers, neither a vicar-general nor a vicar-capitular enjoys the right of establishing any society or of granting the required canonical consent to one already established.

With the exception of a nominal fee to cover the necessary expenses, letters of foundation are to be granted gratis.

Every society shall have its own statutes, which are to be examined and approved by the Apostolic See or by the Ordinary of the diocese.

Statutes which have not been approved by the Apostolic See always remain subject to modification and correction by the diocesan Ordinary.

All societies, even those erected by the Apostolic See, unless they enjoy a special privilege to the contrary, are

subject to the authority of the Ordinary, who has the right and duty to watch over them according to the prescriptions of the sacred canons.

It is not permissible, however, for diocesan Ordinaries to meddle in the internal discipline or spiritual direction of societies which exempt religious institutes have erected in their churches by virtue of an Apostolic privilege.

A society legitimately established may possess and administer temporalities under the direction of the local Ordinary, unless the contrary is expressly stated in the letters of approbation. An account of the property must be rendered at least once a year to the Ordinary, conformably to the prescriptions of can. 1525, but the society is not in this regard subject to the parish priest in whose territory it exists, unless the Ordinary legislates otherwise.

Such a society may accept donations according to the tenor of its statutes, and use them for any good purpose, with due regard, of course, to the will of the donors.

No society is allowed to seek alms, unless its statutes permit or necessity demands it, and then only with the consent of the Ordinary and in the way prescribed by him.

To solicit alms elsewhere than within its own territory, a society needs the written permission of the Ordinary.

The society must render an account to the local Ordinary of the alms and other offerings received.

Unless the contrary be specifically conceded or provided for by law, several confraternities or pious organizations bearing the same name, or founded under the same auspices, may not be erected or approved in the same place. In large cities, however, this may be done

if a sufficient distance intervenes between the respective confraternities according to the good judgment of the Ordinary.

It is the duty of the diocesan Ordinaries to see to it that the confraternities of the Blessed Sacrament and of Christian Doctrine are established in every parish. Once legitimately erected, these confraternities are *ipso iure* aggregated to the archconfraternities of the same name established in the city of Rome.

Confraternities or pious organizations may be erected only in public or semi-public churches or oratories. They cannot be established in cathedral churches without the consent of the chapter. In churches or oratories of women religious, the diocesan Ordinary is allowed to erect associations for women only, or pious organizations, the scope of which is to gain spiritual favors by means of the apostolate of prayer.

On the occasion of the reception of new members into a society, no fee may be exacted beyond that determined in the lawfully approved statutes, or that which the Ordinary of the diocese, by reason of special circumstances, has expressly permitted in favor of the society.

No confraternity is allowed to abolish or modify its garb or insignia without the permission of the diocesan Ordinary.

It pertains to the diocesan Ordinary to preside, either personally or by proxy, at the meetings of confraternities, even those which are held in churches and oratories of regulars, to confirm the election of worthy and capable officials, to reject or remove unworthy ones, and to amend and approve statutes and norms that have not the formal sanction of the Holy See. However, the Ordinary has not the right of suffrage at these meetings.

Confraternities shall in due time notify the Ordinary or his delegate of any extraordinary meeting; if they fail to do so, the Ordinary may impede such meetings or annul their decrees.

Even though nothing be expressly stated in the statutes, the Ordinary of the diocese may dismiss any member of any society. The religious superior enjoys the same right in respect to societies erected by his subjects in virtue of an Apostolic indult.

Unless an Apostolic privilege provides otherwise, the appointment of the moderator and chaplain belongs to the Ordinary in societies established or approved either by himself or by the Apostolic See and in societies erected by religious outside their own churches by virtue of an Apostolic privilege; but in societies established by religious in their own churches, the consent of the Ordinary is required only in case the moderator and the chaplain are appointed by the religious Superior from among the secular clergy.

Unless the local Ordinary determines otherwise, confraternities are obliged to take part in a body in the usual processions, and others ordered by the Ordinary. They march under their own cross and wear their proper insignia.

With the consent of the diocesan Ordinary, any confraternity or pious organization may transfer its quarters from one place to another, unless such a transfer is prohibited either by law or by statutes that have been approved by the Holy See.

The transfer of a confraternity or pious organization that belongs to a definite religious institute, requires the consent of the respective superior.

For valid affiliation it is required: (1) that the associ-

ation be canonically erected and not affiliated to any other archconfraternity or primary pious organization; (2) that it is done with the written approval of the diocesan Ordinary and with testimonial letters from him; (3) that the indulgences, privileges, and other spiritual favors granted to members be enumerated in writing, the list to be inspected by the Ordinary of the diocese in which the archconfraternity exists, and forwarded to the affiliated society; (4) that the affiliation be made according to the form prescribed in the statutes and forever; (5) that, excepting unavoidable expenses, the letters of affiliation be furnished gratis and without recompense, even if such be freely offered.

For grave reasons, and with due regard to the right of recourse to the Holy See, the local Ordinary may suppress, not only a society established by himself or his predecessors, but also a society erected by religious in virtue of an Apostolic indult, requiring the consent of the Ordinary.

Societies erected by the Holy See itself can be suppressed only by the same.

With the exception of such Orders as have been accorded the privilege, no religious institute is allowed to establish a *Third Order*. Hence only *orders of regulars,* but not congregations, even though they be exempt, may establish a third order of their own, and even these need a *special privilege* to that effect.

Although religious superiors may enroll particular persons as Tertiaries, they may not validly establish a sodality of Tertiaries, even though their order has an Apostolic privilege to that effect, without the approval of the diocesan ordinary (can. 686, § 3). Neither are they permitted to allow the sodalities which they—the religious superiors—have erected, to wear a special garb at public

sacred functions, without the express permission of the Ordinary. This special garb must not be confounded with the insignia of the Tertiaries, which consist of a small scapular and a girdle of hemp or wool, which they may wear at processions without special permission.

Here we will add the faculties which the *S. C. of Religious* grants to local Ordinaries. Religious superiors of exempt clerical institutes are not included in this grant; but we believe that, if they have religious institutes under their jurisdiction—which, though not admitted by law (can. 500, § 3), may be obtained or be given for special reasons—, they may also receive these faculties. Numbers 8 and 9 have little practical value for Ordinaries who have no *nuns* under their care.

1. To dispense from *illegitimacy,* if this condition is inserted as invalidating religious profession in the respective Constitutions; for can. 542 contains nothing to this effect. Sacrilegious illegitimacy, however, is not thereby dispensed from, nor can an illegitimacy otherwise dispensed from in virtue of this faculty, be admitted to higher offices; (see can. 504).

2. To grant permission for celebrating *three Masses on Christmas night,* as admitted by the rubrics, in the churches of religious not comprised by can. 821, § 3, provided the same priest says all three Masses (see our *Commentary,* Vol. IV, p. 165 ff.).

3. To grant dispensation for those who, according to the Constitutions of the respective institutes, could not be received by reason of *advanced age.* The Ordinary must, however, previously obtain the consent of the superior, either general or provincial, and his counsellors. Besides, the postulants should not be older than forty years and possess the other necessary qualities (see can. 542).

4. To dispense from lack of the *age required for the*

priesthood, but only to the extent of a certain number of months. This number is not explicity stated; but since the term "month" is used, it is implied that it should be less than a year. This faculty may also be applied in favor of exempt religious, provided they have obtained dimissorials from their superiors. In all cases the studies required by can. 976, § 2 must have been fully completed, unless, of course, the candidate has received a general privilege to the contrary, as the Benedictines did.

5. To dispense Nuns and Sisters from the *defect of dowry,* either entirely or in part, provided the institute does not suffer thereby financially and the candidates are commendable for reasons of great usefulness. Concerning the dowry, see can. 547, which permits Ordinaries to dispense from it in diocesan institutes. The faculty, therefore, concerns only exempt and papal organizations whose Constitutions demand a dowry.

6. To confirm the *ordinary confessor for a fourth and even a fifth term,* provided the majority of the religious vote by secret ballot in favor of his confirmation in office; to this ballot also those who would otherwise be excluded from voting, must be submitted, and provision must be made for those who object to the confirmation if they demand it (see can. 526).

7. To permit the celebration of *Mass on Holy Thursday,* which permission also allows persons living habitually in the community (see can. 514) to receive their Easter Communion (see can. 820 and 859) there.

8. To allow *cloistered nuns* to go to a church adjoining the convent *outside the enclosure,* for the purpose of cleaning and adorning it. There must, however, be no stranger in the church, not even the confessor nor any domestic servant; the door must be shut and the keys

handed to the superioress; the gate leading to the interior entrance must be locked with two keys, one of which must be kept by the superioress and the other by a nun appointed by the Ordinary; this interior gate may only be opened on the above-named occasions and after taking due precautions, one of which is that two nuns must go together.

9. To allow *nuns to leave the enclosure* in case one of them should have to undergo a surgical operation, even if there were no immediate danger of death or of imminent serious consequences, but only for the time absolutely necessary and with due precautions. The latter two faculties are hardly required in our country, except in places or dioceses where there are Visitation nuns with papal enclosure.

SECTION V

POWERS CONCERNING THINGS

The third book of the Code treats *de rebus.* The provisions which it embodies may be called *administrative law,* because the "things" comprised therein together form the object of ecclesiastical administration, either in the merely spiritual or in the mixed domain. Besides, since *a potiori fit denominatio,* and the Sacraments constitute the most important part of this Book, the sacred ministry of the Church here becomes most conspicuous. But even mixed things, such as benefices and temporalities, must be assigned to the administrative section.

The Code understands by the term *res ecclesiasticae* the means by which the Church attains her end. These are either spiritual, or temporal, or mixed. The Code, therefore, treats of the following subjects:

Sacraments and Sacramentals.
Sacred Places and Times.
Divine Worship.
The *Magisterium Ecclesiasticum.*
Ecclesiastical Benefices.
Church Property.

SIMONY

(Can. 727–730)

Two kinds of simony are distinguished in the Code, *viz., iuris divini,* which is a deliberate eagerness to buy or sell for a temporal price anything either intrinsically spiritual or temporal with a spiritual thing attached to it in such a way that the temporal could not exist at all without the spiritual object, or the spiritual object itself, though only in a partial way, is intended in the bargain. Simony *iuris ecclesiastici* is committed when temporal objects annexed to spiritual are given for other objects annexed to spiritual objects, or temporal objects for temporal objects, when forbidden by the Church on account of the danger of irreverence.

The *penalties* are thus stated in the Code:

1°. Prior to any judicial sentence the thing simoniacally given and received must be restored, if restitution is possible and feasible without irreverence to the spiritual object, and the benefice, office or dignity must be surrendered;

2°. The beneficiary of a simoniacal transaction cannot receive the revenues of his benefice, but if he has accepted them in good faith, it is left to the discretion of the judge or Ordinary to condone the income thus received, either totally, or in part.

I. ADMINISTRATION OF THE SACRAMENTS

The Code first sets forth some rules for the administration and reception of the Sacraments *in general,* which may be briefly summed up as follows:

As the Sacraments of the New Law, instituted by Christ our Lord, are the chief means of sanctification and salvation, the greatest care and reverence must be taken that they be suitably and properly administered and received. It is forbidden to administer the Sacraments to *heretics* and *schismatics,* even though they may ask for them in good faith. It is necessary that they first renounce their errors and become reconciled to the Church.

The Sacraments of Baptism, Confirmation, and Holy Orders, which imprint a character, cannot be received twice, *i. e.,* absolutely; but if a prudent doubt exists whether they were in fact, or whether they were validly conferred, they may be repeated.

In the celebration, administration, and reception of the Sacraments, the *rites* and *ceremonies* prescribed in the liturgical books of the Church must be accurately observed, and every one must follow his own rite, with due regard to canons 851, § 2, and 866.

The *Holy Oils* to be used in the administration of Baptism, Confirmation, Extreme Unction, and Holy Orders, must be blessed by the bishop on Holy Thursday of each year, and old ones may not be used except in case of urgent necessity. Should the blessed oil be about to give out, other olive oil that is not blessed may be added, even repeatedly, but in smaller quantities than the holy oil.

Each pastor must ask his Ordinary for the holy oils and keep them in a safe and becoming place in church

under lock and key. He may not keep them in his house except in case of necessity, or for some other plausible reason, and only by express consent of the Ordinary.

Beyond the *fees* established in accordance with can. 1507, the minister of a Sacrament is not allowed to charge or demand anything, for whatever motive or on whatsoever occasion, either directly by exaction, or indirectly by insinuation, for the administration of a Sacrament.

A. *Baptism*
(Can. 731–779)

The Code distinguishes *solemn* from private baptism and defines the former as administered with all the rites and ceremonies prescribed in the liturgical books, while private or *non-solemn* baptism is conferred without these rites and ceremonies.

1. The *Minister.* Although the right of baptizing is reserved to the pastor, and is therefore a strictly parochial right, yet it is evident from the very character of the local Ordinary that the latter is entitled to confer Baptism in any church or public oratory of his diocese, but not in private houses, except in the cases mentioned in the Code. When we say "local Ordinary," we mean all those who go by this name. The local Ordinary may grant permission to another priest besides the pastor to baptize solemnly in any church or public oratory of his diocese. This permission may also be given to one who is only a deacon.

When adults are to be baptized, the local Ordinary should be notified, if it can be done conveniently, in order that, if he so desires, he himself or a priest delegated by him may administer the Sacrament more solemnly. No strict obligation can be read into this canon, as is evi-

dent from the term *deferatur* as well as from the subjunctive form employed.

2. *Rites and Ceremonies.* Baptism should be administered solemnly in all cases except the one mentioned in can. 759. But the local Ordinary may, for weighty and plausible reasons, permit the ceremonies prescribed for infant Baptism to be used in baptizing adults.

Can. 759 rules that in *danger of death* Baptism may be *privately* administered, but the *Ordinary may not permit* private Baptism to be conferred, except on non-Catholic adults who are baptized conditionally. In this latter case the ceremonies need not be supplied, which must otherwise be done if they were omitted.

3. *Godparents. Religious* may be sponsors only with the permission of their superior (major or local) and in cases of urgent necessity. *Clerics in sacris* need the express permission of their Ordinary. When in doubt as to whether one may be legally or licitly admitted to sponsorship, the pastor should consult the Ordinary if time permits.

4. *Time and Place for Baptism.* The Code revokes and reprobates every statute, custom or privilege which would prevent the *erection of a baptismal font in every parish church,* and commands that every parish church should have its own baptismal font. It furthermore rules that the local Ordinary may, for the convenience of the faithful, permit or command another baptismal font to be placed in some other church or public oratory within the boundaries of a parish.

The reasons for this permission may be bad roads or difficult communication, great distance, perhaps a large number of faithful. For temporary permission may be added: war conditions, civil prohibition of passage for reasons of health or contagious diseases, epidemics, etc.

Solemn Baptism, apart from cases of necessity, *may not be administered in private houses* except in the following circumstances:

1°. If those to be baptized are the sons or grandsons of actual *rulers,* or of their prospective successors to the throne. When this privilege is desired, a petition must be sent directly to the Ordinary, or to the parish priest, both of whom are entitled to perform the rite;

2°. If the local Ordinary, after prudent and conscientious deliberation, judges that there is a just and plausible cause for granting the permission in some extraordinary case. Such cases would be: if Catholics would demand to have their children baptized in the house of a *Catholic consul,* which may happen among foreigners; if the distance from church would be very considerable, say, ten geographical miles. Other reasons may be sickness, even though not dangerous, of the one to be baptized. refusal of one of the parents to have the child baptized in a Catholic church, aversion against a certain church or pastor, which prudence might dictate not to increase.

B. *Confirmation*

1. The Sacrament of Confirmation must be administered by laying on the hands, anointing the forehead with chrism, and pronouncing the words prescribed in the pontifical book approved by the Church.

The *chrism* to be used in the administration of this Sacrament must be blessed by a bishop, even though a priest may administer it, either by law or in virtue of an apostolic indult.

The *anointing* is not to be performed with an instrument, but with the minister's hand, placed upon the head of the subject.

This Sacrament of strength or zeal is distinct from Baptism, the indelible character of which it enlarges or deepens. Confirmation confers a grace distinct from the baptismal grace. It is pre-eminently the Sacrament of the Holy Ghost. Being essentially distinguished from the Sacrament of Baptism, it requires a distinct matter and form.

2. The *remote matter* is the *chrism,* which is composed of balsam and olive oil. The latter is essential for the validity of the Sacrament. Balsam, too, belongs to the essence of the matter according to the Decree for the Armenians and the ancient Greek Euchologia. The validity of the matter is, however, not affected by mingling other aromatics with the balsam. The blessing or *consecration* of the matter must be performed by a bishop. Whether a priest, with the permission of the Pope, could consecrate chrism is a speculative question. The affirmative view is certainly tenable. Licit administration requires that the consecration be performed by a *Catholic* bishop, and hence priests are never allowed to use chrism from a heretical or schismatic bishop. The *vicar-general,* even though he be a bishop, cannot lawfully bless the chrism. Lastly, the chrism must be blessed the same year in which it is used, counting from Holy Thursday to Holy Thursday. It is forbidden to use chrism blessed the year before, except in case of necessity.

3. The *proximate matter* of Confirmation is the *anointment.* This is performed by placing three or four fingers upon the forehead and using the thumb dipped in the holy chrism to anoint the same. The sign of the cross in the act of anointing is essential.

§ 2 of can. 781 strictly forbids the use of any instrument (brush or cotton) in the act of Confirmation. The Holy Office has declared that the use of an instrument

endangers the validity of the Sacrament and ordered secret and conditional repetition of Confirmation *in casu*.

The *form* is that prescribed by the Roman Pontifical: *"Signo te signo crucis, et confirmo te chrismate salutis, in nomine Patris et Filii et Spiritus Sancti,"* the act of pronouncing the three Holy Names being accompanied by the triple sign of the cross.

1. The *Minister*. The ordinary *minister* of Confirmation is the bishop, but a priest may act as extraordinary minister if he has received this power either by law or by a special indult of the Apostolic See. Who receives that faculty by *law* is stated in § 3. They are the *Cardinals* of the Holy Roman Church, according to the privileges enumerated under can. 239, § 1, n. 23. Cardinals, therefore, may administer Confirmation anywhere and to any one, but must record the fact in the book especially reserved for recording Confirmations (can. 798).

Others who may administer the Sacrament of Confirmation by law are abbots *nullius* or prelates *nullius*, vicars Apostolic and prefects Apostolic. But these three kinds of ecclesiastics can make *valid use* of this faculty only *within the boundaries of their own territory and during their term of office*. Hence, for instance, the Vicar-Apostolic of North Carolina may administer Confirmation validly only within his own territory. On the other hand, he may, within that territory, also *confirm validly* such as are not his subjects by reason either of domicile or quasi-domicile, and may *licitly* confirm subjects of other dioceses if they have a letter of permission or other testimony from their own bishop or parish priest. By a *special indult* the Guardian (O. F. M.) of the Holy Sepulchre at Jerusalem may confirm persons of the Latin rite if no bishop of that rite residing in his own territory is at hand.

The faculty to confirm is sometimes granted to *mis-*

sionaries who preside over vast provinces. Thus it was given for China and Chile. The condition is always added that they must use chrism blessed by a Catholic bishop. In the instruction which they receive together with the faculty, it is ordained that, whenever they administer this Sacrament, they must mention the special faculty in virtue of which they do so. But this is not required for the validity of the act.

While vicars-Apostolic have this faculty by law, *pro-vicars,* during a vacancy, cannot confirm in virtue of their office, much less delegate other missionaries to administer Confirmation. Any attempt to do so would be invalid, and the Sacrament would have to be re-administered.

A priest of the Latin rite who enjoys this faculty by virtue of an indult, can administer Confirmation *validly only to the faithful of his own rite,* unless the indult expressly grants him larger powers.

Priests of the Oriental rite who are entitled either by virtue of a faculty or of a privilege to confirm children of their own rite immediately after Baptism, may not lawfully confer Confirmation on children of the Latin rite.

A bishop may lawfully administer the sacrament of Confirmation in his own diocese, even to such as are not his subjects, unless their Ordinary has issued a special prohibition to the contrary. To confirm in a strange diocese he needs the at least reasonably presumed permission of the local Ordinary, unless he confirms his own subjects, in which case he is not allowed to use crozier and mitre.

A priest who has an Apostolic indult for administering Confirmation may licitly confirm subjects not his own in his own territory, provided the Ordinaries of the respective *confirmandi* have not expressly forbidden it.

Every *bishop* is in duty bound to administer this Sacrament to such of his subjects as becomingly and reasonably ask for it, especially at the time of the canonical visitation. *Priests* who are endowed with an Apostolic privilege have the same duty towards those in whose favor the faculty was granted.

An Ordinary who is lawfully prevented from, or has not the power of, administering Confirmation, should, as far as possible, take care that this Sacrament is conferred at least *every five years*. If he grievously neglects this duty of confirming his subjects, either personally or through another, the *metropolitan* should see to it that the matter is attended to and inform the Holy See. *Legitimate causes* excusing a bishop from administering Confirmation within the term of five years, would be: protracted illness, exile, and detention by higher superiors. The vicar-capitular has not the power to confirm, but should invite an outside bishop if this Sacrament has not been administered in the diocese for a long time. If grievous neglect has crept into a suffragan diocese, the *metropolitan* may compel or admonish the Ordinary of the same to comply with the law, but he may not administer Confirmation without the suffragan's permission because this case is not mentioned among those in which the metropolitan is authorized to supply the negligence of his suffragans.

2. The *Recipient*. *One who is not baptized cannot be validly confirmed* because he is not yet initiated into the Christian mysteries or incorporated in the mystic body of Christ, which initiation or incorporation confers the right to receive the other Sacraments. Besides, in order to *receive this Sacrament licitly and profitably, one must be in the state of grace*. For though the indelible character is impressed even if one is not in the state of sanctifying grace, the sacramental grace, or, as a text of the *Decretum*

Gratiani says, the sevenfold grace of the Holy Ghost with the plenitude of holiness and knowledge and strength does not descend in Confirmation if this Sacrament is received in the state of mortal sin. Besides, *one who has attained the age of discretion must be sufficiently instructed* in the more important truths of faith as well as the nature and efficacy of Confirmation.

Can. 788 mentions the custom of the Latin Church, which differs from that of the Greek, to defer Confirmation to the age of discretion, *i. e.*, about the seventh year. This *custom,* the text says, is quite proper, but the Sacrament may be administered at an earlier age if the child is in danger of death or the minister judges that there are other just and weighty reasons. Such reasons would be, *e. g.*, great distance preventing one from reaching a place within the time limit of five years,—surely a rare thing.

Can. 789 provides that the *confirmandi,* if there are a number of them, should be *present at the first imposition* or extension of the hands, and not leave before the whole rite or ceremony is completed. This is not, however, a condition affecting validity.

3. *Time and Place.* This Sacrament may be conferred at any time, but it is most fittingly administered in the week after Pentecost.

Although the *proper place* for administering Confirmation is the *church,* it may be conferred in any decent place, provided the minister has a just and plausible reason for so doing. Hence Confirmation may be administered in any private or semi-public oratory, and even in private houses if they are neat and properly kept; also, during the time of an interdict, in an interdicted place.

Every bishop has the right to administer Confirmation within the *boundaries of his diocese, also in exempt places.*

When certain exempt regulars, insisting on their privileges, contended that the bishop was not entitled to administer Confirmation in their (parochial or non-parochial) churches, the S. Congregation decided in favor of the bishop, and Benedict XIV ratified the decision.

When confirming the bishop may make use of throne and baldachin and pontifical regalia.

Exempt places here are monasteries, convents, academies, colleges, churches and chapels (such as are *pleno iure* incorporated) of exempt religious, or other exempt persons; but *not* the exempt territories of prelates or abbots *nullius,* because these prelates are entitled to administer Confirmation in their own districts.

4. *Sponsors.* A most ancient ecclesiastical custom demands that, as at Baptism, so also at Confirmation, a sponsor be employed if possible. He should not stand for more than one or two *confirmandi,* unless the minister deems it prudent to recede from that rule for a just cause. Each *confirmandus* should have but one sponsor.

The Code says that it is left to the minister to decide whether one man may be sponsor for all males, and one woman for all girls. And although the Roman Court was somewhat slow in admitting the custom which prevails in our country, yet it is quite reasonable. For, on the one hand, the duties of the sponsors are less pressing now-a-days, while, on the other, it is often embarrassing for the pastor to provide many sponsors, and to find room for them, especially in small churches.

The *requisites* for valid sponsorship are thus described:

1°. One must be confirmed, have the use of reason and the intention to assume the office of sponsor.

2°. He or she must belong to no heretical or schismatic sect, nor be under any of the penalties mentioned in can. 765, n. 2.

3°. He or she must be neither the father nor the mother nor the consort of the one to be confirmed.

4°. The sponsor must be appointed either by the *confirmandus,* his parents or guardians, or, if these should fail or refuse to appoint a sponsor, he is to be designated by the minister or pastor.

5°. The sponsor must physically touch the *confirmandus* in the act of confirmation, either personally or by proxy.

To be licitly admitted to sponsorship at Confirmation:

(a) One must not have been the baptismal sponsor, unless there be a plausible reason to disregard this rule, or Confirmation is legitimately administered immediately after Baptism.

(b) The sponsor must be of the same sex as the one to be confirmed, unless the minister has a good reason to depart from this regulation in an individual case.

(c) The other rules mentioned in can. 766 must be observed.

Confirmation validly conferred entails a *spiritual relationship* between the confirmed person and the sponsor, in virtue of which the latter is obliged to take a special and perpetual interest in the welfare of his godchild and to see to it that he or she receives a Christian education. However, according to can. 1079, this spiritual relationship *no longer constitutes a matrimonial impediment* and is therefore restricted to the merely spiritual part of education in case the parents fail to do their duty. That godparents, if able, may and should assist their spiritual children in case of need is a dictate of natural reason.

5. *Recording.* The Code, like the *Rituale Romanum,* prescribes that a Confirmation record be kept in *every church* in which this Sacrament is administered. This book must contain the names of the minister, of the persons confirmed and their parents and sponsors, as well as

the date of Confirmation. All these entries must be made by the pastor in a book specially set apart for the recording of Confirmations. Besides, he must also enter every Confirmation in the baptismal record.

C. The Holy Eucharist

1. *The Holy Sacrifice of the Mass and Its Celebration*

Concelebration, except at the ordination of priests and the consecration of bishops, is not allowed in the Latin Church.

The local Ordinary grants the *celebret* or *pastor bonus* to the secular clergy; the religious superior to his own subjects. It must be an *authentic* document, that is, signed and sealed by the Ordinary or the superior. It should not be older than six months, or at most a year. Within six months a canonical impediment may be contracted, as per can. 994. If a priest belongs to the *Oriental* Church, he must show letters from the S. Congregation for the Oriental Church.

Any *special diocesan statutes* concerning this matter, which are in keeping with the present law, *must be observed by all,* including exempt religious, unless they wish to say Mass in a church of their own institute. But if a religious wishes to say Mass in a church that is in charge of secular priests, or of religious of a different order or congregation, he is bound not only by the general law of the Church, but also by the particular laws of the diocese. It is evident that the religious superior of the church where the religious wishes to say Mass is entitled to demand the *celebret.*

Bination. With the exception of Christmas and All Souls' Day, on which every priest may, if he wishes, say three Masses, *no priest is allowed to say more than one*

Mass a day, unless a papal indult or faculty from the Ordinary permits him to do so.

The Ordinary cannot grant this faculty unless he prudently judges that there is such a lack of priests as to leave a considerable number of the faithful without Mass on a holyday of obligation.

(1) The *penuria sacerdotum,* or lack of priests, must be such that there is no other priest who could conveniently say the second Mass. There may perhaps be traveling priests, but unknown or of uncertain standing or physical condition, in which case they must be looked upon as not present. On the other hand, if a priest is present who is still fasting and able to say Mass, he may be compelled by the Ordinary to say Mass in order to prevent bination. But in that case the pastor must furnish a stipend, and if he cannot do so, the people are obliged to supply the deficiency, and if they are too poor, the Ordinary must procure the means. Where there is a sufficient number of priests, bination is not permitted, because the case of necessity is not verified, and other priests, as Benedict XIV says, are bound to the people by virtue of sacred orders.

(2) The *convenience or necessity* of the people. Convenience is to be understood relatively to the place or number of the faithful who would be deprived of Mass. Bination is permitted for the benefit of those who assist at, not of those who say, Mass. The favor is conditioned by *distance* or insufficiency of room, or the convenience of the people. Thus if a priest has to attend two parishes or missions, which are about half a league (two miles) apart, this circumstance suffices to justify bination. The *size of the church* is also to be considered. If the parish is large and the church building comparatively small, that is sufficient reason for binating. The *convenience of the*

people, which falls under the heading of necessity established by law, but is included in the power of the Ordinary, chiefly depends on the number of the faithful. Our text says, *"notabilis fidelium pars."* What is "a considerable part" of a congregation? Benedict XIV once explained this term as meaning *plures,* or several. But no general rule can be deduced from the various decisions of the Roman Congregations. Sometimes fifteen or twenty persons were considered insufficient to permit bination, whereas on other occasions it was left to the "charity and conscience of the Prefect Apostolic" to grant the faculty of binating when only ten or fifteen *servi* (slaves) were present. Hence no precise number can be laid down. But it is undoubtedly the mind of the Church that, on the one hand, there must be a real necessity and, on the other, the Ordinary should not be too scrupulous about granting the faculty, but provide for the spiritual welfare of the faithful, so that all may be enabled to comply easily with the precept of hearing Mass. It follows that in large congregations with a small number of priests each may say two Masses on Sundays and holydays of obligation, in order to accommodate the people, some of whom have to stay at home until the others return from church, and so forth.

(3) The faculty of binating, when granted for reasons of necessity and convenience, *cannot be made use of except on Sundays and holydays of obligation.* Therefore bination on suppressed feasts is not permitted. Nor can the Ordinary grant the faculty for merely devotional purposes, for instance, on the first Friday of the month. The Holy Office has declined to permit bination two or three times a year to satisfy the pious desires of neophytes to receive Holy Communion, considering all the circumstances of time and person in Corea, a missionary country. Such a

permission would not lie within the power of the Ordinary, but would require an Apostolic indult.

Permission is never given to say more than two Masses a day.

The Code says that the Ordinary grants the faculty, which signifies that he should grant it to all pastors or curates who may need it.

Attention may be drawn to the decree of the Holy Office of March 22, 1923, concerning the *fast*.[1] The decree, which may perhaps be modified or elucidated later, states (a) the *occasion* on which the full rigor of the law of the Eucharistic fast may be mitigated: it is either bination or a late hour for saying Mass; then (b) it sets forth the *reasons* for which dispensation may be granted, *viz: grave damnum, infirma valetudo, nimis sacri ministerii labor,* and other reasonable causes; (c) the *authorities* who can grant the dispensation are: the *Holy Office,* which may either dispense individual petitioners or grant habitual faculties to the Ordinaries; and the *Ordinaries* in more urgent cases, with reference to can. 81, but under the following conditions: that only *per modum potus* (exclusive, however, of any intoxicating liquor) something be taken, that scandal be effectively removed; that the Holy See be informed as soon as possible of the dispensation granted, and that dispensation be granted only for the spiritual advantage of the faithful, and not for the private devotion or convenience of the priest.

Dress and Assistance. The priest, when saying Mass, shall wear the cassock (*soutane*) and the sacred vestments prescribed by his rite; but no ring or skullcap, unless he is a cardinal, a bishop, or a blessed abbot, or unless an Apostolic indult permits him to wear these insignia.

With the exception of bishops and prelates entitled to

[1] *Eccl. Review,* Vol. 68, n. 6, p. 580 f.; 585 f.

the use of pontificals, no priest is allowed to have an assistant priest in celebrating Mass merely for the sake of honor or solemnity.

The right of *pontificating* belongs by law to *Cardinals* outside of Rome. If they pontificate in cathedral churches, which they may do upon due notice to the Ordinary of the diocese, they may employ a *presbyter assistens*. *Bishops* and *archbishops* are expressly mentioned as entitled to this privilege. Other prelates who enjoy it are *abbates regiminis,* after they have been blessed by the bishop, and abbots or prelates *nullius*. Supranumerary prothonotaries Apostolic may also have a *presbyter assistens* if no bishop or prelate of higher rank than a bishop is present. *Prothonotaries Apostolic ad instar* may employ an assistant priest only when they pontificate outside their church or in other churches when no bishop or higher prelate is present. *Canons* of cathedral or collegiate churches, although dignitaries, and provosts, *are not* allowed to have a *presbyter assistens*. Much less can the custom, even though immemorable, be tolerated that simple priests celebrate Mass with an assistant priest.

But what about the custom of employing a *presbyter assistens* at the *first Mass* of a newly ordained priest? This question was placed before the Sacred Congregation, who answered: *posse tolerari*. In itself this answer does not sound favorable, since it implies a mere negative toleration; yet we believe the Code does not mean to reprobate the custom, because a *presbyter assistens* is, on such occasions, not employed for mere honor or pomp, but for the purpose of aiding the neopresbyter.

Place. Bishops who by law enjoy the privilege of a portable altar, may set up such an altar in a bedroom,

provided, of course, that the aspect and appearance of this room are such as not to offend against decorum.

The local Ordinary, or, in the case of an exempt religious house, the higher superior, may grant permission to say Mass outside a church or oratory, upon a consecrated altar stone, provided the place is decent (no bed room) and the permission is granted for a just and reasonable cause, for extraordinary cases only, and not habitually.

The *local Ordinary* is the one commissioned to watch over his diocese, and is responsible for abuses which may creep into it. He may grant the permission in question under the following conditions:

(1) That Mass be said upon an *altar stone* which contains sacred relics and is validly consecrated and prepared.

(2) That the place in which Mass is to be said is *decent* or respectable. Decency must be gauged not by adornment merely, but by the respect and reverence due to the august Sacrifice. It is forbidden to say Mass in the churches of heretics and schismatics (see can. 823, § 1), and it would be improper to offer the holy Sacrifice in the private houses of unbelievers or non-Catholics. Theatres and Masonic temples could hardly be styled respectable places for saying Mass, although the former might be used in case of extreme necessity. The open air would be a decent place.

(3) That no permission be given to say *Mass* in *bedrooms* (*in cubiculis*). Hence it would be better, in case of necessity, to choose the living or sitting room for saying Mass. However, the S. C. Prop. has given permission to say Mass in the sleeping room of a sick person (*in cubiculo infirmi*) if there is no other way of administering the Viaticum. But then the minister should see to it

that there are no indecent or superstitious emblems or pictures in the room.[2]

(4) That the permission be granted for a *just and reasonable cause*. As stated above, the Blessed Sacrament may never be exposed to irreverence, nor may the faithful be scandalized. A just reason would be if an epidemic raged in the town or city which would necessitate the closing of the churches; if there were no Catholic church or public oratory in the town or city, or if the precept of receiving the Easter communion could not otherwise be complied with; or if the administration of the Viaticum required it. War and social disturbances would be an additional reason for granting the permission.

(5) This permission, however, is *not* to be understood as a *habitual faculty* or a right to be used by the priest *ad libitum,* but only, as the text says, *"in casu extraordinario et per modum actus."* This would seem to imply that a priest should ask for it every time he deems it necessary. However, we believe the Ordinary can grant the permission to priests in such a way that they would not have to ask for it every time they needed it, provided, of course, the conditions set forth in this section be present. Lastly, it may be noted that this permission may be granted so as to allow Mass to be said in private houses and on any day; but the permission must be issued gratis. It has, indeed, been authentically declared that the faculty granted to the Ordinaries in can. 822, § 4, must be interpreted *restrictive, i. e.,* without undue or arbitrary ex-

[2] S. C. P. F., Sept. 6, 1821 (Col., n. 764). If a bedroom is turned into a sort of funeral chapel after the death of a person, either a cleric or a layman, this room could hardly be styled a bedroom any more, and therefore the law would not apply to it. (*Ephmerides Liturgicae,* Sept., 1920).

tension. However, our comments on the same, as given above, will, we believe bear juridicial scrutiny.[3]

Mass Stipends. It belongs to the Ordinary of the diocese to fix, if possible by a synodal decree, the amount of a manual Mass stipend, and priests are not allowed to demand more. Where there is no episcopal decree on the subject, the diocesan custom must be observed. Religious, even though exempt, must abide by the episcopal decree or diocesan custom.

A priest is allowed to accept a stipend which is larger than the one determined by diocesan statute or by custom; and, unless the Ordinary has forbidden it, he may also accept a lesser one. The prohibition to receive a stipend below the customary sum must be made antecedently, and it would not be just to punish a priest for doing so if no prohibition had been promulgated.

Administrators of pious institutions, and all, whether clergymen or laymen, who are in any way bound to have Mass obligations fulfilled, must send the Masses not yet said to their Ordinaries at the end of each year in some manner to be determined by the latter.

The time for complying with this obligation runs, for quasi-manual stipends, from the end of the year during which the Masses should have been said, and for manual stipends from the day on which the obligation was accepted, with due regard to the intention of the donor.

Causae piae are *pious institutions* under the direction of the local Ordinary, which generally have a number of Masses either imposed by the will of founders or offered by the faithful.

Priests who have Masses that may be sent away or distributed to others may freely do so, provided they observe the canons, nor are they obliged to ask the Ordinary's

[3] *Commissio Pont.*, Oct. 16, 1919 (*A. Ap. S.*, XI, 478).

permission, since the latter would act not only beyond but against the law if he were to prevent the sending of Masses outside the diocese. Therefore any such diocesan statute has no obligatory character.[4]

The right and duty of watching over the fulfilment of Mass obligations belong to the Ordinary of the diocese with regard to the churches of secular priests, but to the superiors of the religious with regard to *their* churches.

Rectors of churches and other pious institutions, whether in charge of seculars or religious, where Mass stipends are wont to be received, shall keep a special book, in which the stipends are to be entered as to number, intention, amount, and date of celebration.

The Ordinaries are obliged to inspect these books at least once a year, either personally or by a deputy.

2. *Holy Communion*

The local Ordinary may grant permission to a *deacon,* who is the extraordinary minister of Holy Communion, to distribute the same for a grave reason, and this permission may in case of necessity be lawfully presumed.

Under the same conditions the Ordinary may also impart to a priest who is not a pastor permission to bring Holy Communion publicly to the sick.

The Code in can. 859, § 2 regulates the *Easter time* thus: "The *time* for receiving the Paschal Communion extends from Palm Sunday to Low Sunday; but the local Ordinaries may prolong the time for all the faithful of their dioceses from Laetare Sunday to Trinity Sunday, both inclusive, provided circumstances of persons and place demand such a prolongation."

May our Ordinaries still make use of the indults men-

[4] S. C. C., Feb. 19, 1921 (*A. Ap. S.,* XIII, 228 f.)

tioned above which permit the extension of the Easter season to the First Sunday in Lent? Our answer is: If the indults are considered as such, merely as indults, then, by reason of can. 4, they may even now be applied. But if the indults are taken as part and parcel of the decrees of our plenary councils, then they are to be looked upon as abrogated by virtue of can. 6. Since favors, like privileges, are permanent (can. 70), it is safe to say that said indults may still be made use of.

Holy Communion may be distributed wherever Mass may be said, even in private oratories, unless the local Ordinary for just reasons forbids it in some particular case.

This text is based on a general decree of the Congregation of Rites permitting the distribution of Holy Communion to all the faithful who assist at Mass in a private oratory. But the decree expressly says: *with due regard to the rights of the pastor,* and consequently these should never be curtailed or jeopardized, otherwise the Ordinary may forbid the distribution of Holy Communion.

D. The Sacrament of Penance

1. *Jurisdiction.* The local Ordinary *enjoys* ordinary jurisdiction *within his territory,* to which, as a rule, he is restricted; but he can also licitly and validly absolve his own subjects anywhere (can. 873, § 1; can. 881, § 2).

May local Ordinaries also absolve *religious of exempt clerical institutes?* There is no doubt that they can absolve them by reason of can. 574, § 1, which gives them power to confer delegated jurisdiction for hearing confessions of exempt religious. Besides, can. 519 also applies to local Ordinaries.

2. *Grant of Jurisdiction.* Delegated jurisdiction is

conferred by the *local Ordinary in whose diocese the confessions are to be heard,* on priests, secular as well as religious, even exempt religious, for hearing confessions of both secular and religious persons; but priests of religious institutes, though thus endowed with delegated jurisdiction, in addition thereto need the permission of their superiors, in order to absolve licitly, with due regard always to can. 519.

Now the *local Ordinary* is the one in whose diocese the confessions are heard. Hence it is not sufficient that a religious obtain what we call the faculties for the diocese in which the religious house is located, to validly hear the confessions of secular persons in another diocese. These faculties do not overlap. Hence if a religious whose house is located in the diocese of St. Joseph, wishes to hear confessions in any part of the Des Moines diocese, he has to obtain the resp. faculty from the Ordinary of Des Moines. This jurisdiction is needed even in the case of a penitent who has an Apostolic indult permitting him to choose any confessor he pleases. The same holds good concerning any secular priest who needs delegated jurisdiction.

Religious need the least presumed permission of their respective superiors. Religious, before being presented to the Ordinary for approval, are usually examined as to their qualification for that office by their superiors or a board of professors. If a religious thus examined is approved by the Ordinary and continues to hear confessions without objection on the part of his superior, the permission may be presumed, even though it has not been asked for in every single instance. Thus, also, permission may be presumed if one is sent to assist another on Sunday.

Note that this *permission nowise affects the validity of confession* as long as the jurisdiction delegated by the

Ordinary is not withdrawn. The local Ordinaries shall not grant *jurisdiction* to hear confessions *habitually* to religious who are not presented by their own superiors. On the other hand they shall not, except for grave reasons, refuse faculties to such as are properly presented by their superiors, with due regard, however, to canon 877.

A *serious reason for refusing faculties* would be lack of knowledge, moral deficiency, or want of pastoral prudence.

Secular as well as religious priests, of whatever rank or office, need a *special jurisdiction* for validly and licitly hearing the confessions of *female religious* and their *novices*. Only Cardinals are exempt from this general law. Can. 522 and 523 mention some modifications of this general law which no contrary particular law or privilege can nullify or alter.

This jurisdiction is granted by the *Ordinary in whose diocese the religious house is located.* The *exceptions* refer to Sisters who, for conscience sake, wish to go to a confessor approved by the Ordinary for hearing women's confessions in a church or semi-public oratory, and to sick Sisters, who may call in any confessor approved for women. (Can. 522, 523.)

In *exempt religious* institutes of clerics, delegated jurisdiction for hearing the confessions of the professed members, novices, and other persons mentioned in can. 514, § 1, may be given by the *superior* according to the Constitutions. The same superior may also grant such jurisdiction to secular priests or priests of another religious institute.

In exempt *lay* institutes the superior *proposes the confessor,* who must obtain *jurisdiction*—not only permission —*from the Ordinary* in whose diocese the religious house is located.

We have no reason to retract what we stated in our

Commentary on the phrase or term *"ad suae conscientiae tranquillitatem."* It does not imply a *conditio sine qua non* of valid confession, but simply a caution to penitents as well as to the confessor against evading the regular confessors.

3. *Requisites for the Grant.* The local Ordinaries shall not grant jurisdiction, nor the religious superior jurisdiction or license for hearing confessions except to such as have been found fit upon *examination.* An exception may be made in favor of those whose theological competency is sufficiently known from other sources.

Should the Ordinary or religious superior have a prudent doubt as to whether a priest once approved continues to be fit, they may submit him to a new doctrinal examination, even though he be a pastor or canon penitentiary.

Here stress is laid on knowledge, and consequently the moral qualifications need not be re-examined because it might reflect on the priest's character. The Ordinary is entitled to subject any confessor even though he be a pastor or penitentiary canon to an examination. Also one whose competence was assumed may be submitted to an examination after he has been given the faculties. The religious superior may submit a religious to a new examination in case he has extra-sacramental knowledge of his doctrinal deficiency on some point.

Delegated jurisdiction, or the license for hearing confessions, may be limited, but local Ordinaries and religious superiors should not restrict it unreasonably. This

[1] The regulars claimed exemption from all restrictions, but Alexander VII, Jan. 30, 1659, proscribed the proposition: *"Non possunt Episcopi limitare seu restringere approbationes, quas regularibus concedunt ad confessiones audiendas, neque ulla ex parte revocare."* Cfr. Benedict XIV, *Instit.*, 86, n. IX.

excludes no class of clergy who need delegated jurisdiction. Therefore also exempt religious [1] who obtain delegated jurisdiction either from the local Ordinary or from their superior may have their jurisdiction limited. But the reason for so doing should at least have the semblance of *justice*. The S. Congregations have more than once admonished Ordinaries not to vex religious with unnecessary restrictions.[2] Any limitations should be based on unfitness, as resulting from the examination, as the Constitution of Clement X, *"Superna,"* plainly states.[3] Restrictions may be made as to persons, place and time. As to *persons* it may be that a priest may be too young to hear women's confessions, or may be suited for one class of persons but not for another, etc. The same reasons would also justify limitation as to *place*. As to *time*, the Constitution of Clement X distinguishes between priests who were found generally fit, and others who proved less or not quite fit in the examination. De Lugo says the bishop may have a reasonable suspicion that one approved forever might care little for further study or intellectual improvement, or the moral character of the candidate may not be fully known to him.[4] The Ordinary should not make the exercise of delegated jurisdiction dependent on the permission of the parish priest;[5] in fact, he should not lay down too many conditions.

For the valid hearing of confessions, jurisdiction must be *granted expressly*, either in writing or by word of mouth; but *nothing is to be charged* for the grant. Tacitly

[2] S. C. EE. et RR., Sept. 13, 1641; Sept. 22, 1645 (Bizzarri, *l. c.*, p. 25 f.); S. C. P. F., Dec. 11, 1838, ad 5 (*Coll.*, n. 879).

[3] See § 4, and Innocent XIII, *Apostolici ministerii,"* May 23, 1723, §§ 16, 19

[4] Ballerini-Palmieri, *Opus Theol. Moral.*, V, p. 287.

[5] S. Rit. C., May 13, 1719 (*Dec. Auth.*, n. 2264).

granted jurisdiction is entirely rejected. One would look in vain for the word *"express"* in the papal Constitutions quoted by Cardinal Gasparri, though its equivalent is certainly to be found there. What is *tacit jurisdiction?* It is one which an Ordinary or superior knows to be exercised by his subjects, and to which he does not object, although he could easily do so. For instance, a bishop calls a missionary from another diocese to give a mission in a parish of his own territory. Thereby he was formerly supposed to have granted him the necessary faculties for hearing confessions. Such tacitly granted jurisdiction can no longer be held to be sufficient for validly hearing confessions. There must be an *express* grant. The Ordinary in calling a missionary must explicitly confer upon him delegated jurisdiction, and the pastor must expressly obtain the same for a missionary, unless the latter belongs to the diocese or has obtained faculties for the diocese in which he is to give the mission.

4. *Revoking Jurisdiction.* Local Ordinaries *shall not revoke* or suspend jurisdiction or license for hearing confessions, *except for a grave reason.* But if there is such a reason, the local Ordinary may also forbid the pastor or canon penitentiary to exercise the office of confessor, with due regard, however, to the right of *appeal in devolutivo* to the Apostolic See. In the case of a *domus formata,* the bishop is not allowed, without having first consulted the Apostolic See, to take away jurisdiction from all confessors of a religious house at the same time.

Revoking the faculties or jurisdiction affects the validity of confessions, while the recall of the license only concerns licitness, but may reflect on the moral character and reputation of the confessor. Hence it is that a *grave reason* is required for the revocation of either. Such a reason is stated in a decree of 1615 and styled "a reason

connected with confession." This apposition is further determined in the Constitution of Clement X, "*Superna*," which indeed speaks only of regulars, but may be said to cover our case, which includes both religious and secular clerics. It is stated there that if religious live scandalously or dishonorably, or if they have committed a crime which, according to the prudent judgment of the bishop, demands suspension from hearing confessions, these would be reasons justifying such suspension.

The text draws a distinction between *domus formata* and *non formata*, the former being a house in which live at least six professed members, four of whom are priests; while the *domus non-formata* is one with less than this number.

The Code implies that only in the case of a *domus formata* must the Holy See be consulted before the bishop can suspend all the priests of a community from hearing confessions. In smaller communities, which have not at least six members, four of whom are priests, all the priests may be suspended by the bishop from hearing the confessions of lay people or secular priests or non-exempt religious. From hearing the confessions of exempt religious the Ordinary cannot suspend exempt religious, since these receive delegated jurisdiction from their own superiors. If a bishop should attempt such suspension in the case mentioned (*domus formata*), it would be the metropolitan's right and duty to remind him of can. 880, § 3. On the other hand, the Ordinary may, for a grave reason, without asking or notifying the superior, remove or suspend a religious from hearing the confessions of female religious. But if the female religious be subject to a religious exempt superior, the latter would be entitled to present another religious for approval or examination, in order to obtain jurisdiction.

It may also be noted that the Code in this latter case uses the term "bishop." Why? It seems certain that the reason is to grant this power only to the bishop, not to the vicar-general or the administrator.

Furthermore, it is probable that a recall of jurisdiction granted after due examination is invalid if made without just reason.

5. *Confession at Sea.* Any priest traveling on the ocean may hear the confessions of all the faithful who travel with him on board the same ship, although the vessel on its trip may pass, or even stop for some time at, various places subject to different Ordinaries. But in order to absolve these travelers validly and licitly the priest must have duly obtained the faculty either from his own Ordinary, or from the Ordinary of the place he sails from, or from the Ordinary of any port which the vessel passes. As often as the vessel stops on its trip, the priests endowed with faculties may validly and licitly hear the confessions of such of the faithful as may for any reason visit the vessel, as well as the confessions of those who approach them for that purpose when they go on land for a short stop. In this latter case, they may absolve also from cases reserved to the Ordinary of the diocese where they stop.

Reservation of Sins

Those who possess ordinary power for granting faculties to hear confession or to inflict censures, are empowered to call certain cases before their tribunal, thus restricting the power of absolving vested in their inferiors. However, vicars-capitular and vicars-general may not use this power of restricting without a special mandate. This *avocatio* or restriction of cases is called

reservation. Local Ordinaries should not reserve sins, unless the matter has been discussed at a diocesan synod, or consultation with the Cathedral Chapter and some of the more prudent and experienced directors of souls has made evident the necessity or utility of a reservation.

Among the superiors of *exempt clerical institutes,* the superior general, and in autonomous monasteries the abbot, with his councillors, may reserve sins of their subjects, with due regard, however, to can. 518, § 1, and to can. 519.

Clement VIII and a decree of the S. C. of Bishops and Regulars had emphasized, not the power of exempt religious, for this follows from exemption itself, but the need of prudence and moderation in reserving cases, the number of which was reduced to eleven, but is still more restricted by can. 897.

The superiors to whom can. 896 applies are those of *exempt clerical* orders or congregations. Superiors of exempt lay or of non-exempt clerical congregations do not enjoy the power of reserving cases. For the latter class the Ordinary may establish reservations, as also the Apostolic See when approving the Constitutions.

In centralized religious orders the *superior general* alone can reserve cases. In doing so, he must proceed like the bishop, *i. e.,* consult with his councillors and, if he wishes, with others who are experienced in the direction of souls. It is true he is not bound by their advice, for the text of can. 895, to which our canon refers, does not require their consent. But it would be folly and a grievous transgression of an important law in a serious matter not to obtain the advice of the councillors.

The *abbot* of an *autonomous* monastery must proceed in the same manner. By the way it may be noted that

neither the Abbot Primate of the Benedictine Order, nor the Abbot President of each congregation, has any power with regard to reserving cases.

Our canon, lastly, draws attention to can. 518, §1, and can. 519. The former prescribes, in accordance with an enactment of Clement VIII, that a number of confessors shall be appointed in each house for absolving from reserved cases. Can. 519 grants to any priest approved by the Ordinary the right of absolving any religious from cases reserved by the religious superior.

The cases to be reserved shall be few, namely, *three, or at most four,* of the more grievous and atrocious external crimes, specifically determined. The reservation itself should not remain in force longer than is necessary to uproot some inveterate public crime and to restore Christian discipline (can. 897).

But Ordinaries, and religious superiors as well, shall refrain from reserving sins already reserved to the Holy See by reason of the censures attached to them, and, as a rule, shall not reserve sins which the law has laid under censure, even though this censure be not reserved to any one in particular (can. 898).

Here the question may occur to the reader: Does can. 898 *invalidate* reservation of sins already reserved by law, and more especially reserved to the Apostolic See? We answer: The text of can. 898 may be divided into three clauses, to wit:

1) Ordinaries shall abstain from reserving to themselves cases which are already reserved under censure to the Holy See;

2) They shall, *as a rule*, abstain from reserving cases reserved under censure by law. Hither belong the cases reserved by law to the Ordinaries.

3) They shall, *as a rule*, abstain from reserving cases reserved to no one, but reserved by law.

The first prohibition is unconditional; but the second and third are conditioned by the adverb *regulariter*. Hence reservations made by and to the Apostolic See should not be made episcopal reservations in any case.

But cases reserved by law to the Ordinaries, or reserved to no one, have a phrase attached, *viz.*: *"as a rule."* This can mean nothing else but that the bishops should not make it a rule to reserve to themselves cases already reserved to them by law, or reserved to no one by law.

This is the verbal interpretation of can. 898. Is there any solid reason to depart from it? We cannot see any such reason. For if it is objected that it is repugnant that bishops should reserve to themselves cases from which they can absolve only by delegated power, the answer is: Concerning the cases *specialissimo* or *speciali modo*, reserved to the Apostolic See there might be some shadow of a reason. But as to cases simply reserved to the Apostolic See, or reserved to the bishops by law, or reserved to no one, there cannot be any reason. For in these cases they absolve *propriâ auctoritate*, granted by law or general faculties. Besides, if the Bishop wishes to impress the faithful with the seriousness of a crime, he may bind himself, or rather shift the odium of the reservation to the Apostolic See. Lastly, it matters little whether he absolves *potestate propriâ* or *delegatâ*. It must, however, be observed that the Code strictly enjoins Ordinaries not to make cases reserved to the Apostolic See episcopal cases. This is deducible from the first proposition. But it must be added that invalidity of such reservations cannot be read into the text. The term *"abstineant"* cannot be stretched so far, nor can the *"nequit ferre"* of can.

2247, § 1 be simply taken as involving invalidity. For the *"nequit"* alone does not warrant such interpretation. If the legislator had intended invalidity, he would have said so, as, for instance, in can. 782, § 3: *"valide uti nequeunt."*

Cases reserved for reasons of necessity or utility *should be brought to the knowledge of their subjects* by the Ordinaries, who should not grant indiscriminate faculties to absolve from them.

The *Canonicus Poenitentiarius* has by law the faculty of absolving from the cases reserved to the bishop. This canon penitentiary may belong to a cathedral or to a collegiate church, both of whom enjoy the power of absolving by virtue of their office and of law. Besides, the legislator wishes that the faculty of absolving from these reserved cases should be *habitually delegated* to the *rural deans*, who should also be given the power of *subdelegating toties quoties* confessors of their districts, especially in parishes distant from the episcopal see, whenever these confessors have recourse to the deans for individual and urgent cases.

Indulgences

The *Pope* may grant indulgences for the whole Church, without any limit as to kind, place, and persons.

Archbishops and *bishops* may grant indulgences in their respective provinces and dioceses, the former of 100 days, the latter of fifty days. These indulgences are called local because they apply only to the territory over which the respective prelates have jurisdiction.

Cardinals may grant a two hundred days' indulgence, *toties quoties*, in any place (titular church or institution) and to any person under their jurisdiction and protection. Their power also is an ordinary one by law.

Apostolic delegates who have received faculties from the Pope for granting indulgences, should abstain from attaching such to devotional objects or acts of piety which have already been thus enriched by a bishop within his territory.

Bishops and archbishops may attach the indulgence which the law empowers them to grant on the occasion of solemn functions, to images or statues, provided the material is such as prescribed by the Church. These indulgences of 50 or 100 days may be gained by the faithful who recite the prayers prescribed before said statues or images. But these prelates are not allowed to grant more than 50 or 100 days.

Prelates of inferior rank to the Pope (1) cannot impart to others the faculty of granting indulgences, unless they have an express indult to that effect from the Apostolic See; (2) cannot grant indulgences applicable to the poor souls; (3) cannot attach additional indulgences to an object, or an act of piety, or a confraternity which have already been indulgenced by the Holy See or some other prelate, unless new conditions are prescribed.

Every *bishop* may impart the papal blessing in his own diocese with a plenary indulgence, according to the formulary prescribed in the *Pontificale Romanum* twice a year: once on the feast of Easter, and once on another day, which the bishops themselves may designate, even though they should only assist at the solemn Mass. The same may be imparted, but only on one of the more solemn feasts of the year, by abbots or prelates *nullius,* by vicars-Apostolic and prefects-Apostolic, even though they are not endowed with the episcopal dignity.

Regulars who have the privilege of imparting the papal blessing, are not only obliged to use the formula prescribed, but may exercise that privilege only in their own

churches or in the churches of *moniales* and tertiaries lawfully aggregated to their order, and are not allowed to give the papal blessing on the same day and in the same place on which the bishop imparts it.

Bishops, abbots or prelates *nullius,* Apostolic vicars and prefects, and the major superiors of exempt clerical religious may designate and declare *one altar daily privileged forever* in their cathedral, abbatial, collegiate, conventual, parochial, and quasi-parochial churches, provided there be no privileged altar in said churches. In public or semi-public oratories, unless they are united to a parish church or serve as its subsidiaries, no privileged altar may be assigned by the prelates mentioned.

Indulgences not yet published at Rome, may not be promulgated without the consent of the local Ordinary. This law is binding also on regulars.

In publishing books, pamphlets, etc., which contain indulgences for various prayers and pious works, can. 1388 must be observed.

Those who have obtained from the Sovereign Pontiff indulgences destined for all the faithful are obliged under penalty of nullification of the favor granted, to send an authentic copy of the same to the Sacred Penitentiary.

New indulgences are those which have not yet been promulgated at Rome, and are therefore not registered in the office of the S. Congregation of Indulgences. Since the establishment of the official *Acta Apostolicae Sedis* (1909) it is easy to know what indulgences are authentically promulgated.

The following remarks concerning the *publishing of books, pamphlets,* or *leaflets,* or summaries of indulgences, may prove useful. The Code refers to can. 1388, which requires the *permission of the local Ordinary,* according to the well-known Constitution of Leo XIII, *"Officiorum ac*

munerum," Jan. 25, 1897, n. 17. But § 2 of can. 1388 also requires the *express permission of the Holy See* for the publication, in any language, of an authentic collection of prayers or good works to which the Apostolic See has attached indulgences, of a list of Apostolic indulgences, and of a summary of indulgences which have been previously collected but never approved, or are for the first time collected. Hence every new collection or new list (*elenchus*) or summary of indulgences which have not as yet been approved by the S. C. Indulg., needs the express permission of the Holy See and of the Ordinary. If an indulgence, or a list or summary or collection of indulgences which have been approved by the S. Congregation, or are taken from an Apostolic brief or rescript, is to be printed or published, the Ordinary may give permission to do so without submitting the same to the S. Congregation, unless a special prohibition has been issued. Religious superiors may have a summary of the indulgences granted to confraternities established by their institute printed and circulated with the sole approval or *visum* of the Ordinary.

Unless the tenor of the grant sounds differently, indulgences granted by the bishop may be gained by his subjects also when outside their own diocese. *Peregrini, vagi,* and all who live in the territory may gain the indulgences granted for that territory. This, of course, is to be understood of indulgences that are not merely local; for local indulgences cannot be gained outside the place to which they are attached.

E. Extreme Unction

The ordinary *minister* of this Sacrament is the pastor, but the local Ordinary may give permission to another priest to administer it.

The *olive oil* to be used in the administration of Extreme Unction must be blessed for that purpose by the bishop or by a priest who has obtained the necessary faculty from the Apostolic See.

F. Holy Orders

1. *The Minister.* In the following canons the term *higher* or *sacred orders* signifies the priesthood, the diaconate, and the sub-diaconate; the term *minor orders* signifies the offices of acolyte, exorcist, lector and doorkeeper.

The terms *"ordinare, ordo, ordinatio, sacra ordinatio"* comprise not only the orders mentioned in the preceding canon, but also the episcopate and the first tonsure, unless the nature of the thing itself or the context implies a different meaning.

The ordinary minister of sacred ordination is every (validly) *consecrated* bishop, even though he be a schismatic or heretic.

No one ordained by the Roman Pontiff may lawfully be promoted to a higher order without an Apostolic faculty. This rule, however, holds only if the Pope in *person,* or another prelate by special command of the Pontiff, ordains a clergyman. Consequently, one ordained in Rome by the Cardinal Vicar does not enjoy this distinction. On the other hand, it does not matter what order the Pope has conferred, for the text says: *"Ordinatum a Romano Pontifice,"* and this term includes tonsure, according to can. 950. The episcopate also is comprised therein, but this is mentioned especially in can. 953.

Episcopal consecration is reserved to the Roman Pontiff, and no bishop is allowed to consecrate any one unless he is certain of the papal mandate. The *consecrator*

shall be assisted by two other bishops, unless an Apostolic dispensation has been granted from this rule. This law does not affect the validity of a consecration, but it is a grievous obligation to employ two co-consecrating bishops. Sometimes the Roman Court grants a dispensation permitting the employment of two dignitaries of the cathedral chapter, or simply two dignitaries, as assistants. Thus Leo XIII permitted the bishops of *Latin America* to employ two dignitaries whenever two bishops were not readily available.

2. *Episcopus Proprius.* As every one should be ordained by his own bishop, or at least with the latter's dimissorial letters, so the *episcopus proprius*, unless prevented by a just cause, should himself ordain his subjects. However, no bishop of the Latin rite may lawfully ordain a subject of an Oriental rite without an Apostolic indult.

The *bishop competent to ordain secular priests* is the one in whose diocese the ordinand (1) was born *and* has his domicile, or (2) has his domicile, although he was not born there. In the latter case he must make oath as to his intention of remaining permanently in the diocese. Exceptions will be explained further down.

This *oath is not required* in three cases: (a) when the cleric to be ordained has already been incardinated in the diocese by the first tonsure; (b) when he is to be ordained *ad titulum servitii ecclesiae;* (c) when he is a religious with simple perpetual vows. The reason for *a* lies in the fact that incardination must be perpetual and absolute, and given with the required testimonials (can. 956).

Apostolic Vicars and Prefects as well as abbots and prelates nullius, if endowed with the episcopal character,

are equal to diocesan bishops in matters of ordination. If they do not possess the episcopal character, they are nevertheless entitled to confer, within the boundaries of their district and whilst their office lasts, *tonsure and minor orders* on their own secular subjects, according to can. 956, and also on others who are provided with dimissorial letters as required by law. If they overstep the limits here drawn, any ordination performed by them is invalid (can. 957).

3. *Dimissorial and Testimonial Letters.* Dimissorial letters, from the Latin word *dimittere aliquem ad alium,* are letters given by the *episcopus proprius* to another bishop informing him that he may lawfully ordain a candidate of the former's diocese. *Testimonial* letters certify the fact that the *ordinandus* possesses all the qualities and requisites prescribed by law.

The following may, as long as they retain jurisdiction in their respective territory, grant *litterae dimissoriae* to their *secular* subjects:

(1) The *episcopus proprius,* even though not yet consecrated, after having taken lawful possession of his diocese, *i. e.,* as soon as he himself or his proxy has exhibited the Apostolic letters of appointment to the diocesan chapter, or the diocesan consultors *in corpore,* in the presence of the secretary of the chapter or the diocesan chancellor.

(2) The *vicar-general,* but only by special command of, or commission from, the bishop. This command or commission may be given orally or in writing, either for one case or for several cases, during the bishop's absence, for instance, or sickness.

(3) The *vicar-capitular* (our administrator) with the *consent* (not merely advice) of the chapter (or diocesan consultors) after the vacancy of the episcopal see has

lasted one year. *Within the first year* of vacancy the vicar-capitular may grant dimissorial letters only to *arctati, i. e.,* such as have already received, or will receive within that year, an ecclesiastical benefice (for instance, a canonicate) which requires ordination. *Arctati* are also those who have received or are about to receive an office which, on account of the needs of the diocese, must be filled immediately. This may occur even now, especially after the late world war, in countries where there is a great want of priests or chaplains. If the government—provided this right has been granted to it by the Holy See—has appointed a chaplain or nominated a pastor who is not yet a priest, the vicar-capitular may give him the *dimissoriae.* The same is true if the deceased bishop has appointed one to an office requiring the priesthood.

(4) *Vicars Apostolic, prefects Apostolic,* and *abbots or prelates nullius,* even though they are not consecrated bishops, may now also grant dimissorial letters for sacred orders. This is but the logical consequence of can. 957. Formerly prelates *nullius* could not grant dimissorial letters even for tonsure and minor orders, this right being reserved to the *episcopus vicinior.*

The *vicar-capitular* shall not grant dimissorial letters to such as were rejected by the deceased bishop. This enactment is similar to that of can. 44 concerning rescripts. The object is to protect the authority of the bishop and the unity of government, and to keep undesirable candidates out of the sanctuary.

Whoever is entitled to grant dimissorial letters for receiving orders may confer those orders himself, provided he possesses the necessary *potestas ordinis.*

Can. 962 permits every bishop (in communion with the Holy See), upon having received the lawful dimissorials, to ordain a candidate not subject to his jurisdiction, pro-

vided he has no reason to doubt the genuineness of the letters, and provided also he observes the ruling of can. 944, § 3, concerning additional testimonials. Authenticity is beyond doubt if the signature and seal of the issuing bishop are attached to the documents, though forgery is never absolutely excluded.

Can. 963 rules that the dimissorial letters may be limited or revoked either by the grantor himself or by his successor, but do not expire, even if the grantor should lose his power.

A *limitation* may be made concerning the bishop, who may be personally designated in the letter, or concerning the time, which may be restricted to three or four months. There may also be limitations regarding examination (cfr. can. 977.) Thus the letter may be worded: "If he is found fit after examination." If this is a real condition, clearly expressed as such in the letter, the dimissorial would become null if the candidate failed to pass the examination.

Revocation must be duly intimated either to the candidate to whom the letters were given, or to the bishop to whom they were addressed.

Concerning the ordination of *religious* the Code rules as follows:

(1) *Governing abbots,* provided they are priests and duly blessed, may confer tonsure and minor orders on their own subjects.

(2) Superiors of *exempt religious* institutes, whether regulars or otherwise exempt, must give dimissorial letters to their subjects, in order that a bishop may licitly ordain them. Such dimissorial letters must be given for tonsure and minor orders as well as for major orders, for n. 2 of our canon does not distinguish between the different orders. Therefore the religious exempt superiors, not

the local Ordinary, grant dimissorial letters for all *orders,* lower or higher.

(3) *All religious superiors* of orders as well as congregations, the Constitutions of which prescribe perpetual vows, may grant dimissorial letters to their *temporarily professed* members, but only for *tonsure and minor orders.*

(4) Members of *religious institutes which are not exempt* need *litterae dimissoriae* from their *own bishop* if they wish to be promoted to *major orders,* beginning with subdeaconship. Hence with regard to sacred orders these members fall under can. 956, which determines the competency of the bishop. Every indult to the contrary must now be regarded as void.

(5) *Novices* of religious orders as well as congregations must observe the law binding seculars (can. 956).

(6) *Members of religious societies* must follow the same rule (can. 956).

It may be asked whether a governing abbot may address dimissorial letters to *another abbot,* who is entitled to confer tonsure and minor orders on his own subjects; for instance, to the Abbot President or the Abbot Primate. This was possible and actually done before the promulgation of the Code. But the practice can no longer be sustained, since the legislator emphasizes the invalidity of ordination performed on a non-subject. Notice well the subject is one *vi professionis,* not by a transient transfer of jurisdiction.

The bishop to whom the religious superior must direct the dimissorial letters, is the bishop in whose diocese the religious house of which the ordinand is a member, is situated.

Only in the following cases may the religious superior direct the *litterae dimissoriae* to *another* than the diocesan

bishop: (1) If the diocesan bishop has given permission; or (2) if he is of another rite; or (3) if he is absent; or (4) if he does not hold ordinations at the time stated in can. 1006, § 2; or (5) if the diocese is vacant or ruled by one who lacks the episcopal character. However, in every such case the facts must be attested to the ordaining bishop by an authentic document of the curia of the bishop competent for ordination.

Testimonial letters must be issued and obtained *before* dimissorial letters can lawfully be granted. If new testimonials are necessary after the dimissorial letters have been issued by the Ordinary, the other bishop shall not ordain the candidate before he has received them. If the candidate has lived in the diocese of the ordaining bishop long enough to contract a canonical impediment, the ordaining bishop shall himself gather the necessary information. New testimonial letters are required if a candidate has lived in the same territory for six or three months after the first testimonials were issued and ordination has not yet taken place; for six or even three months suffice to contract a canonical impediment.

Seculars as well as those religious who in matters of ordination are governed by the rules laid down for seculars, must produce:

1°. A certificate of the *order they have received* last, or if tonsure is to be received, their baptismal and confirmation record;

2°. A certificate showing that they have completed the *studies* required for the several orders according to can. 976;

3°. Testimonials from the *rector* of the *seminary*, or from the priest to whose care the candidate had been entrusted during his stay outside the seminary, as to his good character;

4°. Testimonials from the *Ordinary* of the diocese in which the candidate has lived sufficiently long to contract a canonical impediment;

5°. Testimonials from the *higher superior,* if the candidate belongs to a religious community.

Can. 994 determines the *time* which may be considered sufficient for one to contract a canonical impediment. It is, as a rule, *six months after the age of puberty,* and three months for those engaged in military service. However, the bishop may, if he thinks it prudent, demand testimonials for a shorter time, and also for the time before the age of puberty.

If the Ordinary himself, or other responsible men of his surroundings or diocese, do not know the candidate sufficiently well to be able to testify to his freedom from canonical impediments for the time spent in the diocese, the Ordinary shall demand a supplementary oath from the candidate. This same oath shall also be demanded if the candidate has lived in so many dioceses that it is impossible, or extremely difficult, to obtain all the testimonials required.

If, after the testimonials have been obtained and before the candidate is ordained, he again lives in the same territory for a space of time which may suffice for contracting a canonical impediment, new testimonials from the local Ordinary are required.

Can. 995 regulates the matter with regard to *religious superiors.* These, when given *litterae dimissoriae,* must testify that the candidate has made religious profession, and that he is a member of the religious house subject to the resp. superior, has completed the required studies and complied with the other conditions demanded by law. Upon having received the *litterae dimissoriae* thus described, the bishop needs no other testimonials.

The *contents* of the testimonials for the secular clergy refer to studies, moral character, and freedom from canonical impediments.

Preparation and Requisites

In order to receive orders licitly, the candidate must, according to the judgment of the Ordinary, be endowed with the qualities prescribed by law and free from any irregularity or canonical impediment.

The bishop should not ordain *seculars,* unless he knows that they are needed or will prove useful. However, he is allowed to ordain any one of his subjects who may be destined for the future service of another diocese, supposing, of course, excardination and incardination.

A bishop or higher religious superior may, for any canonical (even though secret) reason, and without a formal trial, forbid his subjects to receive orders; but a subject thus interdicted retains the right of recourse to the Holy See, or, in the case of religious who have been enjoined by their provincial, to the superior general.

Care should be taken that those who aspire to sacred orders be received into the seminary at an early age. All candidates for the sacred ministry are obliged to live in a seminary at least throughout the entire course of their theological studies, unless the Ordinary, for grave reasons and upon due deliberation, dispenses from this rule in individual cases.

Candidates for orders who lawfully dwell outside the seminary should be commended to a pious and worthy priest, who should watch over them and train them in piety.

Tonsure and inferior orders should be given only to such as have the intention to ascend to the priesthood and give

reason to hope that they will become worthy priests. If, however, one who has been ordained (say to subdeaconship) refuses to receive higher orders, he cannot be compelled by the bishop to receive such higher orders, nor be forbidden the exercise of the orders he has received, unless a canonical impediment or some other grave cause, in the judgment of the bishop, should intervene.

The bishop shall not confer sacred orders on any one unless he has positive proof, amounting to moral certainty, of the candidate's canonical fitness; otherwise he not only commits a grievous sin, but exposes himself to the danger of sharing in the guilt of another.

That candidates *may be licitly ordained* the following conditions *are required*:

1°. They must have received the Sacrament of Confirmation;

2°. Their moral conduct must be conformable to the order they wish to receive;

3°. They must have attained the canonical age; no one may be ordained subdeacon before he has completed his twenty-first year; deaconship cannot be received before the twenty-second year is completed, and the priesthood cannot be received before the twenty-fourth year is completed. For tonsure and minor orders no age is prescribed, but the following canon establishes a certain limit.

4.° They must have the necessary *knowledge;* hence neither seculars nor religious may receive the tonsure before they have entered upon the study of theology. Subdeaconship may be conferred only after the end of the third year of the theological course, deaconship after the beginning of the fourth year, and the priesthood in the second term of the fourth year. This law, of course, is not binding on religious or secular institutes which have obtained a favor from the Apostolic See after the pro-

mulgation of the Code. Thus the Benedictines obtained a privilege from Benedict XV, in 1921, for a special reason. Whether our bishops have a general indult to ordain candidates before they have completed the prescribed studies, we could not ascertain, although we endeavored to obtain authentic information. The *theological course* must be taken, not privately, but in a school conducted according to can. 1365. Of the philosophical course the text makes no mention, hence this may be taken privately.

5°. They must have received inferior orders, and hence no ordination is allowed *per saltum,* and,

6°. The *interstices* must be duly observed. However, it is left to the bishop to *determine the intervals between the tonsure and the ostiariate,* and between the several minor orders. The interval between the acolythate and subdeaconship must last one year; the interval between the subdiaconate and the diaconate, as also the interval between deaconship and the priesthood, must last at least three months, unless the bishop deems it necessary or useful for his diocese to shorten these intervals. Any plausible reason is sufficient. It may be added that it is the ordaining *bishop* who grants dispensation also in case of religious who may enjoy the privilege of being ordained without regard to the interstices. The bishop, in ordaining such as are not his subjects, may also dispense from the intervals. *Minor Orders and subdeaconship,* or two sacred orders, may never be conferred on the *same day* without the express permission of the Roman Pontiff. Every contrary custom is reprobated by the Code. Neither is it allowed to confer tonsure together with one of the minor orders, or all the minor orders at the same time.

7°. They must be in possession of a *canonical title,* if

they wish to receive orders. For the secular clergy the canonical title is that of an *ecclesiastical benefice,* or, where this is wanting, that of a patrimony or pension. This title must be secure for the life-time of the ordinand, and entirely sufficient to support him properly, according to the regulations established by the Ordinaries to meet the needs and circumstances of place and time. If a clergyman in holy orders *loses the title to which he was ordained,* he must procure another, unless in the judgment of the bishop, he is well provided for in some other way. If a bishop has ordained a cleric without a canonical title, with the mutual *agreement* that the ordinand should not demand any support of him, the stipulation is void. Such a practice would savor of simony, and the text from which the Code took this law, actually belongs to the title on simony. The penalty is suspension from conferring orders for one year and is reserved to the Holy See.

If none of the three titles, benefice, patrimony, pension, is available, the title of *service of the diocese,* or, in the provinces subject to the S. C. Propaganda, the *titulus missionis* may be substituted. However, in both cases the ordinand must make oath that he will permanently serve the diocese or mission under the jurisdiction of the respective Ordinary. The Ordinary owes to the one promoted to the title of service or mission either a benefice or an office or a subsidy affording him sufficient support.

The title *paupertatis* is strictly limited to *regulars, i. e.,* members of religious orders with solemn vows, and to solemn profession. Hence clerics belonging to orders whose members are only simply or temporarily professed, cannot be ordained on the title of religious profession. This applies also to regulars working on missions that are under the jurisdiction of the Propaganda. For *religious* of *simple perpetual vows,* the title is that of *mensae*

communis, or *congregationis,* or a similar one, according to their own Constitutions. All *other religious* fall under the common law of the Church, so far as the title of ordination is concerned. Hence

1°. Religious with purely *temporary vows* cannot be ordained subdeacons unless they have a canonical title, or one acknowledged by law, as prescribed for seculars;

2°. Novices are bound by the same law as the secular clergy;

3°. Members of religious societies without vows must obey the law laid down for the secular clergy, unless they have a special privilege.

Irregularities and Canonical Impediments

The Code treats of these impediments, not as penalties, but as mere obstacles to the receiving or exercising of orders, and distinguishes between irregularities arising from defect and crime, and impediments proper.

Among the irregularities *ex defectu* it reckons: (1) illegitimacy, (2) bodily defects, (3) mental deformities, (4) bigamy in the canonical sense, (5) infamy by law; (6) the fact of having pronounced a sentence of death, and (7) having concurred in the execution of capital punishment.

Among the irregularities *ex delicto* it enumerates: (1) apostasy, (2) anabaptism, (3) attempted marriage, (4) homicide, (5) suicide and mutilation, (6) the practice of medicine or surgery by clerics, (7) abuse of an order.

Canonical impediments are: (1) heresy, (2) the marriage bond, (3) temporal administration, (4) slavery proper, (5) military service, (6) weakness in faith, (7) infamy in fact.

Ignorance of irregularities does not excuse from incur-

ring them. However, the Code grants to Ordinaries power to dispense from impediments which arise from occult crimes, except homicide.

Examination Before Ordination

The Code, in accordance with old custom, enacts that seculars as well as religious must, before ordination, be carefully examined concerning the order they are going to receive. This information can best be obtained from the *Pontificale Romanum*, which should therefore be studied, together with the practical exercises. Those to be promoted to higher orders shall also undergo an examination in the one or other theological discipline, which they have studied in school. The bishop has the right to determine the method, the examiners and the subject-matter of these examinations. The prelate before whom the secular as well as religious clergy have to pass this examination (can. 997, 1°) is the *competent Ordinary*, who either himself ordains them or grants them dimissorials. The competent ordinary may, for a just reason, entrust the ordaining bishop with this examination, provided the latter is willing.

Although the names of the candidates for ordination should be publicly announced in their respective churches —except for religious—the bishop may, for a just reason, dispense with this announcement; but he should not hesitate to obtain private information if he thinks it necessary.

Rite, Time, and Place

The Mass of ordination or episcopal consecration must always be celebrated by the minister of ordination or consecration.

Episcopal consecration must be conferred during the solemnity of the Mass on a Sunday or the feast of an Apostle in the strict sense of the term. *Higher Orders* should be conferred during holy Mass on the four Ember Saturdays, on the Saturday *"Sitientes,"* before Passion Sunday, and on Holy Saturday. However, the bishop may ordain to higher orders also on any Sunday or holyday of obligation if there be a grave reason for so doing.

Tonsure may be given on any day and at any hour of the day, in the forenoon or in the afternoon. *Minor Orders* may be conferred on Sundays or on weekdays which have a feast celebrated or marked in the diocesan calendar as *duplex.*

The *custom* of ordaining outside the times prescribed in the preceding sections is *reprobated.* These times must be observed also when a *bishop* of the *Latin rite,* in virtue of an Apostolic indult, ordains a clergyman of an *Oriental rite,* and conversely. The reason for this latter enactment is the contrary practice of the Oriental bishops, who have never received the decrees and decretals of the Western Church and still ordain on any day of the year.

A bishop is not allowed, without the permission of the local Ordinary, to confer any orders which require the exercise of pontificals outside his own diocese.

General ordinations should be held publicly in the *cathedral church,* and the canons of that church should be called and be present thereat. If these ordinations are held elsewhere in the diocese, a more prominent church should be selected and the local clergy should be present.

The bishop, for a just reason, may hold *particular ordinations* in some other church, or in the chapel of the episcopal residence, or in the oratory of a seminary or convent.

Tonsure and minor orders may also be conferred in private oratories.

Recording of Ordinations

After ordination the names of those who have been ordained, as well as that of the ordaining minister, together with the place and day of the ordination should be entered in a *special book,* which must be carefully kept in the court of the place of ordination. Besides, all documents relating to individual ordinations should be carefully preserved.

Each one who has been ordained should be given an authentic attestation of the order received. In case the candidates are ordained by a strange bishop, with dimissorials from their own ordinary, they must show the certificate to their own bishop, in order that it may be registered in the special book to be kept in the archives.

In the case of the secular clergy the local Ordinary, and in case of religious ordained with his dimissorials, the religious superior must inform the pastor of the church in which the ordinand was baptized of his ordination to subdeaconship, in order that said pastor may enter the fact in the baptismal register.

The religious superior here mentioned is a superior of exempt religious, because none other can give dimissorials for sacred orders.

G. The Sacrament of Matrimony

Christ has raised to the dignity of a sacrament the marriage contract between two baptized persons. This contract enjoys the favor of the law in this sense that, if a doubt arises as to validity, it is simply presumed (*praesumptio iuris simplex* not *iuris et de iure*).

1. *Species of Marriage*

A valid marriage contracted between baptized persons, is called ratified (*ratum*) so long as it has not been consummated by conjugal intercourse; *ratified and consummated,* if perfected by the conjugal act to which matrimony is by nature directed and by which the partners become one flesh.

If the parties have lived together after the celebration of marriage, *consummation is presumed* until the contrary is proved. This proof must be obtained by inspection on the part of two physicians or competent nurses or midwives, unless circumstances render such inspection unnecessary, as when, for instance, it could be established by trustworthy witnesses that one of the parties left the other immediately after the matrimonial celebration; or if the woman had been a prostitute.

A marriage validly contracted between unbaptized persons is called legitimate, but not sacramental. Thus a marriage between two Jews or two Gentiles, for inst. Indians, is really a *matrimonium legitimum,* but is never termed *ratum*—unless the State has affixed an invalidating clause to the non-observance of some formalities. And we hold that the civil authority has a right to set up invalidating impediments concerning marriages of non-baptized citizens. The reason is that the essence of the marital contract consists in the mutual consent properly manifested (can. 1081), and, unless the State has attached an invalidating clause to the nonfulfilment of the prescribed formality, all that is required for a marriage-contract is mutual consent sufficiently determined to make it a contract.

An invalid marriage is called feigned (*putativum*) if

at least one party is in good faith, and until both become aware of its validity.

2. *The Law of Marriage*

Marriages of baptized persons are governed by divine and canon law, with due regard to civil law concerning the purely civil effects. The *divine* law concerns unity and indissolubility,—therefore, the marriage bond. It may also be safely said to touch blood relationship in the direct line, ascending as well as descending. Furthermore, it affects impotency, because this is intimately connected with the first purpose of matrimony—the procreation of children. Finally, the divine law, as can. 1060 states, may also interfere with mixed marriages.

The *canon law* is nothing else but the Code. Directly this concerns Catholics only, although indirectly it may also affect non-Catholics, who contract marriage with a Catholic party. Orientals, if they marry among themselves, are not touched by the Code.

Here are the interpretations given subsequently to the promulgation of the Code (19 May, 1918) by the Pontifical Commission[1]:

The Code is *not retroactive* with regard to engagements or impediments. This must be understood as follows: Engagements no longer constitute an impediment to marriage if the marriage is contracted after the 18 May, 1918; but action from a breach of promise, as per can. 1017, § 3, is still allowed. If a marriage was contracted before May 18, 1918, with an impediment now abrogated by the Code, it did not become valid by the promulgation of the Code. This concerns the fourth degree of blood relationship, the third and fourth degree of affinity, and spiritual

[1] *Commissio Pontificia*, 2–3 June, 1918 (*A. Ap. S.*, X, 345 f.).

relationship, which, however, no longer extends to minister and parents, nor to sponsors and parents, nor to relationship from Confirmation (can. 768).

A remark concerning can. 1070, disparity of worship. *If* the Code does not legislate for those outside the Catholic Church, a marriage between a baptized Anglican and a non-baptized party is now valid. On the other hand, according to the authentic interpretation stated above, such a marriage contracted before May 18, 1918, does not become valid by the promulgation of the Code.

A *claim arising from an engagement* is no sufficient cause for deferring a marriage, nor is it necessary to settle the claim before allowing the marriage.

3. *Bethrothal or Engagement*

A promise of marriage, made either by one party or by both, is void in the court of conscience as well as in the external forum, unless it is made in *writing and signed by the parties* themselves *and* by the parish priest, or the diocesan Ordinary, *or* at least two witnesses. In case both parties, or one of them, does not know or is unable to write, it is required for the validity of the act that this fact be noted in the document itself and another witness be added, who, together with the pastor or the Ordinary of the diocese, or the other witnesses, shall sign the document. *From a promise of marriage,* though this be valid and no just reason excuses, *no action is admissible to compel the celebration of marriage.* However, an action to recover damages is permitted.

4. *Instructions and Banns*

It is the business of the diocesan Ordinary to issue special regulations to pastors on the instruction of nup-

turients. This may be done in an appendix to the "Diocesan Statutes," unless the Ordinary himself wishes to compose or recommend a manual for the purpose.

The publication of the *banns* is to be made by the parties' own pastor (*parochus proprius*), *i. e.,* the pastor in whose parish the parties have their domicile or quasi-domicile. The diocesan domicile cannot be alleged. If a party has lived in *another place* than the parish of the *parochus proprius* for *six months* after the age of puberty, the pastor shall report the matter to the Ordinary, who may prudently order either the banns to be published in that place or else proofs or conjectures to be gathered which establish the party's free status. If the pastor suspects the existence of an impediment, he should report to the Ordinary, even though the party has lived less than six months in the other place, and the Ordinary shall not give permission to marry until the suspicion has been removed.

The Ordinary may substitute for said publication the public posting of the names of the contracting parties at the doors of the parish church or some other church; the notice must remain posted for eight days, including two holydays of obligation.

The publication of the banns is to be omitted in marriages contracted with a dispensation from either disparity of cult or mixed religion, unless the Ordinary discreetly permits it, provided no scandal is given, and provided that the apostolic dispensation has been obtained, and no allusion is made to the non-Catholic party's religion.

Scandal might arise among the people because of the non-Catholic party's aversion to the Catholic religion, or because of the Catholic's marrying a non-Catholic, especially in preponderantly Catholic parishes.

The diocesan Ordinary may, according to his discretion, dispense from the publication of the banns in his own diocese or in a strange diocese, provided there is a lawful reason. If the parties belong to different dioceses the bishop in whose diocese the marriage is to be celebrated, is entitled to dispense; if the marriage takes place in neither of the two dioceses, either of the Ordinaries may dispense. By *Ordinary* is understood the bishop, the vicar-general, or the vicar-capitular, even without a special commission (*administrator* and *abbas nullius*). But inferior clergymen, such as deans, *pastors*, or curates have no power to grant a dispensation. However, in case a marriage would surprise a pastor, as it were, and he is aware that it could be maliciously hindered, and certain that no impediment exists, he may omit the publication, *vi declarationis,* if no time is left for consulting the bishop. This holds especially in danger of death.

Should a marriage be delayed for six months after the banns have been published, the publication must be repeated, unless the Ordinary decides otherwise.

To *ascertain the free status of the contracting parties,* the pastor must, in case of a certain impediment, or of a doubtful impediment, consult the Ordinary or report the matter to him. He is not allowed to assist at a marriage of *vagi,* unless he has previously referred the case to the Ordinary of the diocese, or to a priest delegated by the latter, and obtained his permission. *Vagi* are such as have neither a domicile nor a quasi-domicile, and, with regard to marriage, have not stayed for thirty days in any one place, *i. e.,* parish or diocese.[1] Hence one who has roamed about in a diocese for thirty days without settling in any parish thereof, cannot strictly be called *vagus.*

The pastor shall gravely admonish minors not to marry

[1] See Can. 91.

without the knowledge of their parents or against their reasonable wishes. If they refuse to obey, he shall assist at the marriage only after having consulted the Ordinary of the diocese.

5. *Impediments*

An impediment is an obstacle to either a valid or licit marriage. Here we deal with *canonical* impediments. This term, "canonical," may be taken in a wide or in a narrow sense. In the wide sense it comprises all ecclesiastical impediments, either of divine or human law, because the Church is competent to declare or interpret the divine law, and, therefore, to state which impediments are of divine law. In the narrower sense the term "canonical" includes only those impediments which the Church has set up as merely ecclesiastical impediments. This is enunciated by the Code in the following words, which must be strictly interpreted: "It belongs to the supreme authority of the Church to declare authentically when the divine law forbids or invalidates a marriage. To the same supreme authority belongs the exclusive right to establish, for baptized persons, other impediments, prohibitive or invalidating, by way of universal or particular law."

The Code vindicates to the *local Ordinaries* the right of forbidding a marriage in a particular case. Therefore, their power is limited; it extends only to *individual* cases and, besides, cannot be exercised except for a *just cause*. Such a cause would exist, *e. g.,* if the Ordinary would have reason to doubt the free status of one or both of the contracting parties, either because no papers were received or because papers had been refused by another bishop. Another just cause would be a reasonable doubt as to the existence of an impediment, or a strong pre-

sentiment of future trouble. However, the bishop may not forbid a marriage for an indefinite term, but only for *a time,* as long as the reason lasts. Therefore a definite term should be set, say two or three months, which, in ordinary times, would enable the parties to obtain the necessary papers and remove existing difficulties. Lastly, the Ordinary's power extends only to those who actually live *within his diocese* or are *his subjects, even if they dwell outside the diocese.* Therefore all Catholics who live in a diocese, no matter for how short a time, must abide by the order of the bishop, if he forbids their attempted marriage. The same rule applies to subjects who have their domicile or quasi-domicile in the diocese, but momentarily live elsewhere, though in such cases it will be proper to notify the Ordinary of the other diocese.

Local Ordinaries cannot add an invalidating clause (*clausula irritans*) to any particular marriage forbidden by them. This power belongs exclusively to the Apostolic See; therefore a marriage contracted against the prohibition of the bishop is and remains valid.

The Roman Pontiff alone can either *totally* or *partially abolish impediments established* by ecclesiastical law, whether prohibitive or diriment. Note the term *ecclesiastici iuris,* for impediments of natural or divine law, such as those of *ligamen* or impotency, or blood-relationship of the first degree, can never be abolished or modified by the Pope. But ecclesiastical impediments were established by the Church and can be either totally or partially abrogated by her.

The *Sovereign Pontiff alone,* and no one else, *can dispense* from *matrimonial impediments,* unless the power has been granted by the common law or by special papal indult.

Customs tending to introduce a new impediment or to abrogate those in force, are expressly *reprobated*.

6. *Classification of Impediments*

A *prohibitive* impediment implies a grave prohibition of contracting marriage, but does not render it invalid if contracted. A *diriment* impediment both gravely forbids marriage and prevents it from being contracted validly. Even when the impediment exists only on one side, it renders marriage illicit or invalid.

An impediment is considered *public* when it can be proved in the external forum; otherwise it is occult. If, besides the party or parties concerned, two trustworthy persons know of the impediment, and have means to prove it, it can no longer be styled occult. One authentic document (*e. g.*, a baptismal record) is sufficient to prove the existence of an impediment.

Impediments are, furthermore, of a *higher or lower* degree:

Major	*Minor*
1. *Age.*	
2. *Impotence* (*iuris nat.*).	
3. *Ligamen* (*iuris nat.*).	
4. *Disparity of Cult* and *Mixed Religion.*	
5. *Sacred Orders.*	
6. *Solemn Profession.*	
7. *Rape.*	
8. *Crime,* with adultery and *uno machinante,* or without adultery, but *utroque machinante.*	1. *Crime* with adultery and promise of marriage.
	2. *Consanguinity* in the

Major	*Minor*
9. *Consanguinity,* whole direct line and first and second degree of the collateral line (*iuris nat.* 1° *gr. lin. rectae*).	third degree of the collateral line.
10. *Affinity* in the whole direct line and first degree of the collateral line.	3. *Affinity* in the second degree of the collateral line.
11. *Public honesty* in the first degree.	4. *Public honesty* in the second degree.
12. *Legal Adoption.*	5. *Spiritual relationship.*

We put the impediment of mixed religion, though only prohibitive, among the major impediments, as the Code seems to justify this classification (see can. 1071). As to the impedient impediments, a classification of them is superfluous.

7. *Dispensation from Impediments by Law*

The Code (can. 1043) grants the right of dispensing to *local Ordinaries* under the following clauses and reservations:

a) When one of the parties concerned is in *danger of death,* for the relief of conscience, and, if necessary, for the legitimation of children;

b) This dispensation may be applied, under the aforesaid circumstances, to *all* impediments of *ecclesiastical law,* diriment and impedient, public and occult, simple and multiplex, with the exception of the impediments of the priesthood and affinity in the direct line arising from a consummated marriage. It is, furthermore, applicable

to clandestine, namely, marriages contracted without observing the form prescribed by the Church.

c) The *conditions* are that *scandal be removed* in each and every case of these dispensable impediments; this clause does not, however, affect the validity of the dispensation.

d) Concerning *disparity of worship* and *mixed religion,* the condition is and must be complied with, at least in the form of an oral promise, that the two precautions be guaranteed; if the parties refuse to comply with this last-named demand—which involves a divine law (can. 1060) —the Ordinary cannot validly or licitly apply the dispensation.

e) The local Ordinary can grant this dispensation to *all his subjects,* wherever they may be, and to all other persons *actually residing* in his territory.

Under the conditions laid down in can. 1043, if the impediment is not discovered until everything is ready for the marriage, and the ceremony cannot be delayed without the probable danger of a grave inconvenience, until a dispensation is obtained from the Holy See, Ordinaries can dispense from all the impediments mentioned in this canon.

This faculty holds good for the revalidation of a marriage already contracted, if delay be dangerous and there is no time for recourse to the Holy See.

In the same circumstances the pastor, priest and confessor mentioned in can. 1044 enjoy the same faculty, but they are allowed to apply it only in occult cases, which admit of no recourse to the local Ordinary, or if access to the Ordinary would entail danger of violating the secret.

This is the well-known *casus perplexus* of canonists.

The pastor or priest—the confessor is exempted—must immediately inform the Ordinary of every dispensation

granted *in foro externo* and record the same in the matrimonial register. Of course, the validity of a dispensation does not depend on this record.

8. *The Ordinaries' Powers of Dispensing by Faculties.*

The Code (can. 1040) states the rule that local Ordinaries cannot dispense from impediments—as they cannot set up impediments—unless this power is given them either by law or by a special papal indult.

1. The law grants this power: (1) in the cases mentioned in can. 81, provided the conditions mentioned there are verified; (2) where there is danger of death (can. 1043), as just explained, and the *casus perplexus* arises (can. 1045). Besides these cases there is nothing else granted by law, hence recourse must be had to a special papal indult.

2. Can. 1049 mentions such a special, or rather general, indult. Is there any distinction or, perhaps, a contradiction between the special indult mentioned in can. 1040 and the general indult of can. 1049? The answer is, no. For the former canon draws the line between the common law and a special indult, while can. 1049 distinguishes between a general indult and a particular indult or rescript, as is evident from can. 1051.

Now, then, a *general indult* is that granted in the *Formulary of March* 17, 1922, provided, however, that the respective Ordinaries had *applied for and obtained* these faculties. For having received the Formulary is not sufficient to authorize an Ordinary to make use of the faculties therein contained. It is an offer, not a grant.

These faculties, which we put here in the order of the Formulary, concern, as far as marriage is in question, either the *forum internum* or the *forum externum*. The faculties for the *forum externum* are granted by the Holy

Office or the S. C. of Sacraments, and regard public impediments. For the *forum internum* the S. Poenitentiaria is exclusively competent, which, however, may grant faculties for the *sacramental* as well as for the *non-sacramental* forum, as can. 1047 plainly rules.

I. *The Holy Office* grants the following faculties:

1. To *dispense* from the prohibitive impediment of *mixed religion* and the invalidating impediment of *disparity of worship*. The clause is added: "conditions, restrictions and instructions may or should be added according as they may be required by various cases and places." The *clausulae* concern the two conditions or *reversales* to be signed by both parties. The *limitationes* may regard certain sects or religious, *v. g.*, Jews; *instructiones* will touch upon proclamations of the banns, assistance and subsequent precautions, perhaps also the conduct of the pastor with regard to a specified party. The omission of the clauses, excepting the two conditions required by law, would not invalidate the use of the faculty.[1]

II. The *S.C. of the Sacraments* grants these faculties:

1. To *dispense* for a just and reasonable cause from all *minor impediments*. These, according to can. 1042, are:

a) Crime with adultery and promise of marriage;

b) Consanguinity in the third degree of the collateral line;

c) Affinity in the second degree of the collateral line;

d) Public honesty in the second degree;

e) Spiritual relationship.

They may also dispense: (a) from the simple vow of virginity; (b) from the simple vow of perfect chastity; (c) from the simple vow not to marry; (d) from the simple vow to receive sacred orders; (e) from the simple vow to embrace the religious state. The added clause *"ad*

[1] See can. 1060 ff.; our *Comment.*, Vol. V, pp. 141, 179 ff.

effectum tantum matrimonium contrahendi," is essential, but only concerns the vows, not the five minor impediments; otherwise it should have found its place immediately after *"ex causa."*

2. To *dispense*

a) from *consanguinity in the second or third degree* mixed with the first, "provided no scandal or surprise be caused thereby." The *"dummodo"* savors of an invalidating clause. However, it should be noticed that neither content nor subject of the clause is such as has ever been considered to constitute such an invalidating clause. If it is such, the faculty appears almost illusory, because surprise is seldom avoidable; and who is to judge of that?

b) From *consanguinity in the second degree of the collateral line.* Here the second degree has no mixture with the first; the cause is omitted.

c) From *affinity in the first degree of the collateral line,* either equal or mixed with the second degree;

d) From *public honesty in the first degree,* provided there be no doubt that one party is not the offspring of the other party; this is an essential condition.

At the beginning of this paragraph 2 there is a clause embracing the impediments enumerated, *viz.*: that the dispensation is to be granted "for a grave and urgent reason whenever there is danger in delay and the prospective marriage cannot be deferred until a dispensation from the Holy See can be obtained." For an explanation of this clause see can. 81 and 84.

3. To *dispense,* during and in the act of the pastoral *visit or sacred mission,* and not otherwise, from *all the above-mentioned matrimonial impediments those who live in concubinage.* The "pastoral visit" is the one mentioned in can. 343, and should, we believe, be extended to other diocesan visits, provided they bear the character

of pastoral, and are not merely friendly, visits. The missions are those named in can. 1349. The text does not specifically require that the Ordinary himself give the mission, but his presence is demanded by reason of the *"in actu."* As to the meaning of concubinage, see can. 1078.

4. To heal in the root (*sanandi in radice*) marriages invalidly contracted on account of one of the *minor* impediments, provided it would be very inconvenient to obtain renewal of consent for the party who is ignorant of the impediment, and provided also the former consent continues, and there is no danger of a divorce. The party aware of the impediment must be told of the effect of this *sanatio,* and a note added in the marriage register (see can. 1138 ff.)

These faculties granted by the Holy Office and the S. C. of Sacraments belong to the *forum externum.* However, there are to be considered, some rules which the Code has established and which must be observed in applying the faculties granted.

1. If application for a dispensation has been made to the Holy See, local Ordinaries should not use the faculties they have, except in accordance with can. 204, § 2. This canon rules that an inferior shall not interfere in matters brought before a superior except for grave and urgent reasons, in which case he must immediately notify the superior (can. 1048).

2. If an impediment from which they cannot dispense, concurs with another impediment, or with several public impediments, from which they can dispense, they must petition the *Holy See* for all impediments; because the minor does not draw the major after it (can. 1050).

3. If, however, the impediment or impediments from which they can dispense are discovered only after peti-

tioning the Holy See for the dispensation, they may make use of their faculties (can. 1050), despite the canon quoted above, because can. 1048 supposes that the impediment had been duly known and knowingly applied for, whereas canon 1050 supposes ignorance.

4. The Ordinaries have the right to dispense from an *impediment,* although it be multiple, no matter whether there is question of a marriage already contracted or to be contracted. For instance, when one is related to his partner in the second degree by a double *stipes* arising from the same common progenitors, or is related in the third degree and also in the second degree on account of common progenitors (can. 1076), the degree is multiple, but the species is the same. This practice is also followed by the S. Poenitentiaria, and therefore is to be applied to occult impediments. He who has a general indult to dispense from several impediments of a diverse species, be they diriment or impedient, can dispense from these same impediments if several of them occur in the same case. This would happen if, *e. g.,* disparity of cult concurred with consanguinity (can. 1049).

5. A dispensation from the impediment of consanguinity or affinity, granted for a certain degree, is valid even though a mistake was made concerning the *degree* in the petition or concession, provided that the real degree be inferior to the one which was mentioned. It is valid also though an *impediment has been concealed in the petition, provided it be of the same species* and of an equal or inferior degree (can. 1052).

A dispensation granted from a minor impediment is not vitiated by the fact that a falsehood has been expressed or the truth suppressed in the petition, even though the only final cause alleged be false (can. 1054).

6. The *executor* of dispensations from public impedi-

ments is the Ordinary of the petitioners (*ordinarius oratorum*), who has either drawn up the petition proper, or made a recommendation, which is done when the Ordinary either has doubts about his competency or some misgiving concerning the parties' good faith. As a general rule it may be said that the Ordinary in whose diocese the petitioners have their domicile or quasi-domicile directs the petition or recommendation, and receives the rescript. He may execute the dispensation even though the petitioners (*sponsi*) have given up their domicile or quasi-domicile in his diocese at the time the dispensation is to be used, and have gone to another diocese with the intention of not returning.

The Ordinary who executes the rescript should inform the Ordinary in whose diocese the wedding takes place.

7. Those who grant dispensations by virtue of delegated power from the Apostolic See, *should mention the papal indult when using it.* This text cannot be construed as if the mention of delegation affected the validity of a dispensation. In matter of fact it affects only the licitness of the same; otherwise the lawgiver would have appended an invalidating clause. But it must be expressed in the use of both a general and a particular indult, as all the *clausulae* must be observed as far as circumstances permit.

8. Concerning *charges* or taxes, the Code is rather strict. Can. 1056 says: With the exception of a moderate fee for the expenses of the chancery, the local Ordinaries or their officials are not allowed to charge anything for dispensations, unless the Holy See has expressly granted them permission to make a charge. Every contrary custom is reprobated. If a charge is made without permission from Rome, they are bound to make restitution.

We add here can. 1053 concerning an *implied dispensation from the impediment of crime,* from which the

Ordinaries might, by virtue of their faculties, dispense, but which needs no such application if a dispensation from *matrimonium ratum* has been obtained. *A dispensation granted by the Holy See from marriage ratified and not consummated,* or permission given to marry again on account of the presumed death of the other spouse, always includes a dispensation from the impediment arising from adultery with promise of, or attempt at, marriage (by civil act), if there be need of it; but no dispensation from the other two impediments of crime (can. 1075, n. 2, 3).

III. The *S. Poenitentiaria* grants the following faculties with *regard to marriage:*

1. To dispense those who, notwithstanding the private vow of perfect and perpetual chastity taken after the completed 18th year of age (see can. 1309), have contracted marriage, for the purpose of asking the *debitum coniugale.* The penitent must be told that he or she is obliged to observe the vow outside the lawful use of marriage and if he or she should survive the other party.

2. To dispense from the occult impediment of *crime,* provided there was no *machinatio* (conjugicide) on either side, and provided the marriage had already been contracted. The supposed consorts must be told of the necessity of secretly renewing their consent, and be given a grave and lasting penance. Also to dispense from the impediment of crime under the condition stated when a marriage is to be contracted, with a grave and lasting wholesome penance (see can. 1075 and 1135).

Here may be inserted what can. 1047 states concerning a dispensation granted by way of a rescript. For the text distinguishes between a dispensation from an occult impediment granted for the court of conscience, but *extra-sacramentally,* and a dispensation granted in the act of sacramental confession. The former should be carefully

recorded in a special book to be kept separately in the diocesan archives, as mentioned in can. 379. No new dispensation is necessary for the external forum if the occult impediment should afterwards become public. On the other hand, a dispensation granted in the *act of sacramental confession* does not hold in the external forum, and therefore a new dispensation is required if the impediment becomes public. The beginning of the canon should not be overlooked: *"unless the rescript of the S. Poenitentiaria ordains otherwise—nisi aliud ferat S. Poenitentiariae rescriptum."* This, according to the grammatical construction, can only refer to registration. Besides, it should be noticed that the faculty granted above (n. 8) has no such clause. For the canon refers to a rescript directly granted by the sacred tribunal. Furthermore, it is noteworthy that the faculty here mentioned (n. 8) does not distinguish between a dispensation given in the sacramental forum and one given outside the confessional. Hence the dispensation may be applied in either. We add that if the Ordinary, or the priest empowered to apply the dispensation, should forget the penance or give a more lenient one than stated in the text, the dispensation would nevertheless be valid.

Entirely different from such accidental conditions are the *reasons* for granting dispensations. For one inferior to the Pope cannot licitly or validly grant a dispensation without a just and reasonable cause (can. 84, § 1).

9. *Reasons for Dispensations*

A dispensation granted from a minor impediment is not vitiated by the fact that a falsehood has been expressed or the truth suppressed in the petition, even though the sole final cause alleged be false.

Note the term *"minor impediment."* Major impediments are excluded from the benefit of this canon. Some canonical *reasons* given in the instruction of S. C. P. F.[1] are the following:

(1) *Angustia loci* or smallness of the place or town (not parish). This reason can be alleged by a girl living in a place with less than 1500 inhabitants, because in such a small place it is difficult for a girl—not a widow—to find a husband of equal social standing.

(2) *Aetas feminae superadulta,* or relatively advanced age of the girl, if she is more than twenty-four years old.

(3) *Deficientia aut incompetentia dotis,* if a woman has no dowry or property, and a relative would marry or endow her under certain conditions.

(4) *Lites super successione bonorum iam exortae vel earundem grave aut imminens periculum,* which would be the case if the quarrel could be settled by a marriage between relatives or if the husband *in spe* were the only man who could settle a lawsuit concerning property or inheritance.

(5) *Paupertas viduae,* poverty in the case of a widow, especially if she has several children.

(6) *Bonum pacis,* if it is possible by a marriage to settle family or feudal quarrels and remove long-standing enmities.

(7) *Nimia suspecta periculosa familiaritas,* too long

[1] S. C. P. F., May 9, 1877. (*Coll. P. F.,* n.; "augustiam loci *non esse desumendam a numero focorum* [the reading in the text: *locorum* is a manifest mistake] *cuiusque parochiae, sed a numero focorum cuiusque loci vel etiam plurium locorum, si non distent ab invicem ultra milliare."* A *focus* or *foculare* signifies a home or hearth, *i. e.,* family; a small place is one not having more than three hundred families, and taking a family to consist of five members, we have the number 1500 given above.

courtship and great intimacy, which might cause suspicion or scandal.

(8) *Copula cum consanguinea, praegnantia ideoque legitimatio prolis,* which requires marriage in order that the damage be repaired and disgrace averted.

(9) *Infamia mulieris,* ill-fame of the woman, caused by the fact mentioned under n. 7, even though she be innocent.

(10) *Revalidatio matrimonii,* if a marriage has been contracted in the prescribed form and in good faith.

(11) *Periculum matrimonii mixti vel coram acatholico ministro,* danger of a mixed marriage, which is present especially in small congregations and in communities with a preponderantly non-Catholic population.

(12) *Periculum incestuosi concubinatus,* when near relatives live under the same roof and in imminent danger of concubinage.

(13) *Periculum matrimonii civilis,* danger of a civil marriage if a dispensation be denied.

(14) *Remotio gravium scandalorum et cessatio publici concubinatus;* serious scandal and cessation of public concubinage are generally connected, and here supposed to be actually existing.

(15) *Excellentia meritorum,* if one has deserved well of the Catholic faith by combating its enemies in word or writing, or by generosity, or conspicuous learning and virtue.

10. *Legitimation of Children*

There are several canons dealing with legitimation of children, *viz.,* 1051 and 1114 to 1117, the substance of which may here be combined.

a) Legitimate children are those who are conceived or

born in valid or putative wedlock, except those whose conception falls within the time when the parents could not make lawful use of the marriage rights by reason of solemn religious vows or sacred orders by which they were bound at the time. Children born at least six months after the date of a marriage, or within ten months after the rupture of conjugal relations, are presumed to be legitimate.

b) The children born otherwise are consequently called *illegitimate*. There are several classes, according to a certain degree of illegitimacy, to be distinguished as follows:

1) *Natural* are those who are born of parents between whom either at the time of the conception or birth of the child no valid marriage could exist;

2) *Spurious* are those born of parents between whom at no time a valid marriage could exist. These latter are:

Adulterine, if born of parents one of whom was at the time lawfully wedded to another;

3) *Sacrilegious,* if born of parents who were bound by solemn religious vows, or in sacred orders;

Incestuous, if born of sexual relations between persons legally related either by consanguinity or affinity in the collateral line.

Nefarious, if born of parents related in the direct line, *e. g.,* of a father and his daughter.

c) Illegitimate offspring is legitimated by the subsequent marriage of the parents, be that marriage contracted validly or putatively, either by a new contract or by revalidation, though not consummated, provided the parents were capable of contracting marriage between themselves either at the time of conception, or of pregnancy, or of birth. Legitimated children partake of all

the effects granted by Canon Law, unless the latter makes special exceptions. These canonical effects concern especially the capacity of being ordained without a dispensation and obtaining ecclesiastical benefices and appointments, also certain prelatures of inferior rank. The cardinalate and the episcopacy are excepted (Can. 1116, 1117).

Can. 1051 is somewhat wider in the application of legitimation. It distinguishes between a dispensation from a diriment impediment granted either in virtue of ordinary power, such as is given by can. 1043–1045, or of power delegated by general indult, such as the faculties of March 17, 1922, and a dispensation granted by a rescript in a particular case. The former implicitly legitimates the offspring, whether already born or merely conceived, of the dispensed parents, provided it be not adulterine or sacrilegious. Hence no matter how old the offspring may be—*iam nata*—it becomes legitimate by the fact that a dispensation was granted by virtue of ordinary power or by power delegated through a general indult. This is noteworthy, because can. 1116 might leave the impression as if only such offspring could be legitimated as is born of parents between whom a marriage could have existed either at the time of conception or of birth. Can. 1051 makes no such restriction as to time, and therefore the favor of legitimation must be extended as to time. Only sacrilegious and adulterine children are excepted. These need a special grant from the Sovereign Pontiff. This favor is not applied when a dispensation was granted by way of a *rescript given in particular cases;* for the grantor is not supposed to confer a favor beyond the petition and the terms of the common law.

11. *Prohibitive Impediments*

These are the following: (1) the simple vow of virginity; (2) the vow of perfect chastity; (3) the vow not to marry; (4) the vow to receive sacred orders; (5) the vow to embrace the religious state; (6) mixed marriage.[1]

Reserved to the Apostolic See are: (1) the vow of perfect and perpetual chastity, and from this the local Ordinaries who have obtained the faculty from the S. Poenitentiaria may dispense in case the marriage has already been contracted, but not in case the marriage is not yet contracted; (2) the vow to enter a religious institute with solemn vows; consequently the vow to enter a religious congregation is not reserved. From all the other vows any confessor may dispense and thus remove the *prohibitive impediment.*

Concerning *mixed marriages* the following remarks may suffice:

1) The faculty is granted by the Holy Office.

2) Can. 1065 refers to a class of persons who seem not to fall under the law against mixed marriages. Yet the Code rules: The faithful should be deterred from marrying those who have *notoriously renounced the Catholic faith,* without, however, joining a non-Catholic sect, or those who are notoriously affiliated with *societies condemned* by the Church. The pastor shall not assist at such marriages, except after consulting the Ordinary, who, after due consideration of all the circumstances of the case, may permit the pastor to assist, provided there be a weighty reason and sufficient provision is made for the Catholic education of all the children.

[1] There is also the prohibitive impediment of *legal adoption,* where this is set up as such by the civil authority (can. 1059).

3) Furthermore, the Code treats (can. 1066) of persons styled *public sinners* and persons *notoriously under censure*. If such persons wish to get married, and refuse to go to confession or to be reconciled to the Church before marriage, the pastor is not allowed to assist, except for a grave and urgent reason, about which he shall, if possible, consult the Ordinary.

4) The *banns,* as stated above, are *omitted* (can. 1026). As to the *ceremonies* the Code (can. 1102) rules: In marriages between Catholics and non-Catholics, the consent must be asked as prescribed under can. 1095, § 1, n. 3. All sacred rites are prohibited. If, however, greater evils should be foreseen from this prohibition, the Ordinary may permit one or other of the usual ecclesiastical ceremonies, always, however, excluding the nuptial Mass.

We submit a consideration which has been prompted by some enquiries. Must or should the banns be published in case one party is *newly converted?* We think the answer should be as follows: Taking the text of can. 1022 in the sense of a universal law, such marriages should be looked upon as Catholic marriages, and therefore the law would apply to them. However, the text does not say that *all* Catholic marriages *must* be called, and can. 1028 allows the Ordinaries to dispense for any lawful reason. Neither is the law a perfect one, since it has no penal sanction attached to it. The purpose of the law is to discover impediments. This aim could be obtained only in part, since the friends of the former non-Catholic party would hardly attend the service. Besides, the publication of the banns is not intended to arouse curiosity or ridicule or surprise. Finally the instruction will easily permit the pastor to find possible impediments. Hence we believe the banns in the above-

mentioned case may be omitted without a special dispensation.

For a discussion of single impediments see our "Commentary."

12. *Marriage by Proxy and Through an Interpreter*

A *special mandate* is needed to contract marriage by proxy with a *specified person*. This mandate must be in writing, must be signed by the principal and either by the pastor or the Ordinary of the place in which the mandate is given, or by a priest delegated by either the pastor or the Ordinary, or by two witnesses.

The pastor shall not assist at a marriage which is to be contracted by proxy or through an interpreter, unless there be a just cause for it, and no doubt exists concerning the genuineness of the mandate or the trustworthiness of the interpreter; if time permits, the Ordinary's permission should be obtained.

13. *Forms of Celebrating Marriage* (Can. 1094–1102)

Only such marriages are valid as are contracted before the pastor, or the Ordinary of the diocese, or before a priest delegated by either the pastor or the Ordinary, *and* at least two witnesses, in conformity, however, with the rules laid down in the two following canons, and with the exceptions mentioned in canons 1098 and 1099.

The pastor and the Ordinary may validly assist at marriages:

1°. *Only from the day* they have taken canonical possession of their benefice, or entered upon their office, provided they are not excommunicated, or interdicted, or

suspended from office by a judiciary sentence, or declared suspended, interdicted, or excommunicated.

2°. Only within the *boundaries of their respective territory,* in which, however, they may validly assist at marriages not only of their own subjects, but also of non-subjects.

3°. Provided they are *not compelled* by violence or grave fear to ask and receive the consent of the parties.

The pastor and the Ordinary of the diocese, who can validly assist at marriages, may also grant permission to another priest to assist validly thereat within the limits of their respective districts.

Permission to assist at marriage, given under can. 1095, must be granted to a specified priest for a specified marriage. General delegations are excluded, except in case of assistant coadjutors for the parish to which they are appointed; in all other cases a general delegation would be invalid.

The pastor or Ordinary of the diocese shall not grant such a permission unless he has complied with the regulations of the law for establishing the free status of the nupturients.

The pastor or the Ordinary of the diocese assists at a marriage *licitly*:

1) After having ascertained the free status of the contracting parties, as the Code prescribes, especially in can. 1029–1031, and after the publications of the banns have been made or dispensed from.

2) After having ascertained the fact of domicile or quasi-domicile or monthly stay of at least one of the parties in the place where the marriage is to take place, or of actual stay in the case of *vagi.*

3) If the conditions set down under the preceding number (2) are not verified, the pastor or Ordinary, in

order to assist lawfully at a marriage, must have the permission of the pastor or Ordinary of the place where one of the contracting parties has a domicile or quasi-domicile or monthly stay, except in the case of *vagi*, who are actually on the road and have no residence or home anywhere, or unless a weighty reason excuses from demanding such permission.

Two special cases are mentioned in can. 1098: If the pastor, or the Ordinary, or a priest delegated by either, as prescribed by can. 1095 and 1096, cannot be had without great inconvenience, then:

1) In danger of death marriage may be validly and licitly contracted in the presence of two witnesses; the same holds good also where death is not likely, provided it may be prudently foreseen that the existing condition of things will last for a month.

2) In both cases, however, if a priest is available, he must be called and assist at the marriage together with the two witnesses; but the marriage is valid if contracted in the presence of the witnesses alone.

The *danger of death* need not be imminent, but it must be probable or likely. Neither, of course, is it necessary that *both* parties be in danger.

The personal extent of the law concerning the observation of the form is thus stated in can. 1099: The following are bound to observe the form prescribed: (1) All persons baptized in the Catholic Church, as well as those converted from heresy or schism, even though they (whether Catholics or converts) have afterwards fallen away, when they contract marriage among themselves; (2) Catholics as well as converts who marry non-Catholics, either baptized or non-baptized, even after having obtained a dispensation from the impediment of

mixed religion or disparity of cult; (3) Orientals who marry persons of the Latin rite who are bound by that form.

Saving the rule in n. 1, § 1 of this canon, *non-Catholics,* whether baptized or not, *are nowhere bound to observe the Catholic form of marriage when they marry among themselves.* Neither are those born of non-Catholic parents and baptized in the Catholic Church, but who have grown up from childhood in heresy or schism or infidelity, or without any religion at all, if they marry a non-Catholic party.

As to the *ceremonies,* and the time and place of celebrating marriage, note that the local Ordinaries may, for good reasons, permit solemn marriages even during the period from the first Sunday of Advent to Christmas inclusive, and from Ash Wednesday to Easter inclusive, provided the liturgical rules are observed and too great pomp is excluded (can. 1108).

All *marriages between Catholics should be celebrated in the parish church.* If another church or oratory, either public or semi-public, is preferred, the permission of the Ordinary or pastor should be obtained.

The Ordinary of the diocese may, in some extraordinary case, grant permission to celebrate marriage in a *private house,* provided there be some just and plausible reason for doing so.

Marriages between Catholics and non-Catholics are always to be performed outside the church. However, should the Ordinary in his discretion be convinced that evil might follow from the observance of this law in a particular case, he may dispense from it, provided the ceremonies are observed in accordance with can. 1102, § 2.

Concerning the *marriage of conscience* it may be observed that it is contracted without the publication of the banns and in secret, but not without the formalities prescribed by the Church. Can. 1107 says that no one but the *Ordinary* of the diocese, or his vicar-general, if he has received a special commission *ad hoc* from the bishop, may *permit* such a marriage, and only for most *weighty and urgent reasons*. Such reasons may be the following: if two live together in good faith as married, though they were never married, if the civil law imposes conditions injurious to the freedom of marriage, if the civil power interferes with the liberty, *e. g.,* of soldiers, or if disgrace and discord would be likely to follow from iniquitous laws.

Can. 1105 describes the *pledge of secrecy* thus: the permission for such a marriage implies a promise and the strict obligation of secrecy on the part of the assisting priest, of the witnesses, of the Ordinary and his successors, as well as on the part of the one contracting party, as long as the other will not consent to the divulgation of the marriage.

Can. 1106 *relieves the Ordinary of the obligation* of secrecy in two cases: if secrecy would cause scandal or grave injury to the sanctity of marriage, or if the spiritual ruin of the children were threatened.

The Code, not without reason, insists on the *proper recording* of marriages, saying: "After the marriage ceremony the pastor, or whoever takes his place, shall as soon as possible enter in the marriage register the names of the parties and witnesses, the place and date of the marriage, as well as other data prescribed by the rituals or diocesan statutes; and this he must do even though another priest delegated by himself or the Ordinary assisted at the marriage."

It goes without saying that Ordinaries are not exempt from this ruling, and that they should inspect the matrimonial records at the time of the canonical visitation. It is a very important matter, yet sometimes neglected.

14. *The Pauline Privilege*

In order that a legitimate marriage contracted between non-baptized persons, may be dissolved, even though consummated, it is required that:

1. the marriage must have been contracted between non-baptized persons, or, in the words of the Apostle, between *unbelievers*. This is an important point, for if there is a *doubt* whether one of the parties was baptized, the privilege cannot be applied;

2. That two *interpellations* be made, *viz.*: (a) whether the other party, too, will be converted and receive Baptism, and (b) whether the other party would at least consent to peaceful cohabitation without offense to the Creator. These interpellations must always be made, unless the Apostolic See declares otherwise; and they must be made *after* Baptism in the Catholic Church.

The *interpellations* should, as a rule, be made at least in summary and extrajudicial form with the authority of the Ordinary of the converted party. The same Ordinary may grant to the unbelieving party, who asks for it, time to deliberate,—under the explicit condition, however, that failure to reply within the term conceded will be regarded as a negative answer.

Private interpellations made by the converted party are valid, and also lawful, if the form prescribed above cannot be followed; but in that case evidence of the interpellation having been made must be given by at least two witnesses or in some other legal form.

Although the baptized party has renewed marital relations with the infidel party after Baptism, he or she does not thereby lose the right to contract a new marriage with a Catholic, and that right may be used later if the infidel, having changed his mind, withdraws without a just cause, or refuses to cohabit peacefully without blaspheming the Creator.

It may be well to state that the latest Formulary contains nothing concerning the Pauline Privilege. This is quite natural, since the Code says nothing as to dispensation from interpellations or as to how the Ordinaries should proceed. The Holy See, however, has declared that, in *ordinary cases,* it has the faculties to dispense. And these ordinary cases are those in which it is impossible to find out the whereabouts of the infidel consort, or in which it is ascertained after an extrajudicial and summary investigation that the absent spouse can not be interpellated. This certainly looks like a declaration that interpellation cannot be made and consequently, since, the law favors the privilege of faith in doubtful cases, the Pauline privilege may be made use of without interpellation in ordinary cases. The procedure should be as follows:

(a) The marriage must have been contracted by both parties whilst they were certainly unbaptized; a dubious Baptism would not permit the application of the Pauline privilege;

(b) After Baptism, and not before, either a summary canonical interpellation authorized by the Ordinary, or a private interpellation duly proven, must be made to the infidel party concerning the two questions.

(c) In the case of *polygamists* one question: "whether the unbeliever will be converted," is sufficient;

(d) After a negative answer, or undue delay in answering, the baptized party may contract a new marriage, in virtue of which the former marriage is dissolved and the infidel party becomes free. No other intervention on the part of the Ordinary is needed.

The law (can. 1129) admits *separation*—which is quite different from our so-called legal divorce—in case of adultery. Besides it mentions other causes, for example, if the other party joins a non-Catholic sect; or gives his children an education which is not Catholic; or leads a scandalous and disgraceful life; or gravely endangers the spiritual or bodily welfare of the other; or renders the marital union intolerable by acts of cruelty. These and similar reasons give the spouse the right to withdraw by appealing to the Ordinary of the diocese, or even without legal process, if they are established with certainty and delay would be dangerous.

After the separation, the children must be educated by the innocent spouse. If one of the parties is a non-Catholic, the education of the children belongs to the Catholic party, unless in either case the Ordinary decides otherwise for the good of the children and their Catholic education is duly provided for.

15. *Revalidation of Marriage*

Simple revalidation may be effected by the parties themselves, when both are aware of the invalidity of their marriage, by renewing their consent before the pastor and two witnesses if the form was neglected.

The *sanatio in radice* of a marriage is its revalidation, implying besides a dispensation from, or the cessation of, the impediment, the dispensation from the (ecclesiastical)

obligation of renewing the consent, and, by a fiction of law, retroaction as regards the canonical effects.

Revalidation takes place at the moment the favor is granted; the retroaction is understood to reach back to the moment of the marriage, unless the contrary be stated.

A dispensation from the obligation of renewing the consent may be granted without the knowledge of one or of either party (can. 1138). Local Ordinaries who have obtained this faculty from the S. C. of Sacraments may apply it to *minor impediments* only.

POWERS OF ORDINARIES CONCERNING SACRAMENTALS (CAN. 1144–1153)

Sacramentals are objects or actions resembling the Sacraments, which the Church makes use of by way of intercession to obtain especially spiritual effects. The Apostolic See alone can institute Sacramentals, or authentically interpret those which are in use, or abolish or change them.

No one who lacks the episcopal character can validly perform *consecrations*, unless he is allowed to do so by law or in virtue of an *Apostolic indult*.

A consecration is a blessing accompanied by anointing with holy oils, *e. g.,* a church, an altar, a chalice and paten, a bell, etc. To perform such a consecration *validly* requires either the episcopal character, or a grant by law or papal indult. Consequently:

(a) *All* bishops may validly consecrate the objects mentioned above; but a titular bishop needs the permission or consent of the local Ordinary.

(b) *Cardinals may by law* consecrate churches, altars, and sacred vessels anywhere, with the consent of the

local Ordinary. The same applies to *Apostolic vicars* and *prefects,* even though they are not consecrated bishops, as well as to *pro-prefects and pro-vicars,* who may consecrate chalices, patens, and portable altars within the boundaries of their territory and during their term of office.

By law, finally, *abbots or prelates nullius* may consecrate sacred vessels, churches and altars, portable as well as immovable.

(c) By *Apostolic indult* all those may consecrate who have obtained the privilege directly and not by way of communication.

Blessings reserved to bishops are: the blessing of abbots, the consecration of virgins, the blessing of holy oils and chrism, the dedication of churches, the consecration of altars and sacred vessels (not vestments), the blessing of bells. These blessings are properly called *reserved.*

No one who is endowed with the faculty or *power of exorcizing,* is allowed to pronounce an exorcism over a possessed person unless he has obtained special and express permission to do so from the Ordinary. The Ordinary may grant this permission only to priests who are distinguished for piety, prudence, and integrity of life. No priest shall pronounce an exorcism until he has by a careful and prudent investigation ascertained the fact of real obsession.

The *Ordinary* who is to give this permission is the one in whose diocese the exorcism is to take place, or the one to whom the priest is subject. For exempt religious he is the immediate *superior major,* for the text simply says: *Ordinarius.*

SECTION VI

POWERS CONCERNING SACRED PLACES AND TIMES

I. SACRED PLACES

(CAN. 1154–1242)

SACRED places are places set aside for divine worship, or for the burial of the faithful, by a consecration or blessing prescribed for this purpose by the approved liturgical books.

Consecration is an act performed by the bishop with certain prayers and anointing with oil and chrism, whereas a *blessing* consists of prayers and aspersions with holy water, which, even though reserved to the bishop, may also be performed by priests. Consecration, therefore, is also called solemn dedication, whereas a blessing is a less solemn initiation.

Even *regulars* have to call in the bishop in whose territory a church is to be consecrated. Only in case the local Ordinary, after repeated requests on the part of the regulars, should refuse to perform the consecration, are they permitted to call in another bishop, as Leo X enacted at the Vth Lateran Council.

A *vicar-general* who is endowed with the episcopal dignity, may consecrate sacred places only by special commission from the Ordinary, which should be repeated every time a consecration is to take place.

Cardinals who are not bishops may by law validly consecrate the churches and altars of their own title. Cardinals who are endowed with the episcopal character may, in virtue of a special privilege, consecrate churches

and altars everywhere with the consent of the local Ordinary.

An Ordinary who is not endowed with the episcopal character may grant the faculty of consecrating places to any bishop of the same rite. Thus a *prelate or abbot nullius,* if he is not a bishop, may call any bishop of the same rite into his diocese for that purpose. The same applies to *vicars-capitular* or administrators. *Sede vacante,* regulars also must apply to the latter, who shall call in a bishop for the purpose.

The bishop cannot delegate a priest, not even an abbot, for consecration; if he does so, the consecration is invalid.

The right of *blessing* a sacred place belongs: (1) to the *Ordinary* in whose territory the place is situated, concerning all places which belong to the secular clergy, or to non-exempt religious, or to lay persons, even though these be an ecclesiastical corporation which erected the church; (2) to the *major superior,* if the place belongs to religious who are exempt either in virtue of their regular character or by reason of a special privilege.

The Ordinary as well as the religious superior may delegate another priest, whether secular or religious, whether pastor or not, to bless a place, but not to consecrate it. Hence provincials, abbots, guardians, conventual priors and all who enjoy the power of quasi-provincials, may bless churches and altars either themselves or through others.

Superiors of religious houses which are not *formatae,* are entitled to perform this blessing because they are in fact religious superiors. This applies to directors of schools, hospitals, and charitable institutions, provided they are priests and have some religious men or women under their care.

After the consecration or blessing a *record* should be drawn up, of which one copy is to be kept in the episcopal court, and another in the archives of the church.

Consecration or blessing can be *proved* by one trustworthy witness, provided no injury is done to a third person.

Neither consecration nor blessing is to be repeated after legal proof has been furnished that it has taken place; but if there is doubt, the act may be performed provisionally (*ad cautelam*).

Sacred places are exempt from the jurisdiction of the civil authority, and the lawful ecclesiastical authority freely exercises jurisdiction in them.

Churches

A *church* is a sacred building dedicated to *divine worship,* chiefly for the purpose that it may be made use of by all the faithful for public services.

No church may be *built* without the express consent, in writing, of the diocesan Ordinary. The vicar-general cannot give this consent without a special mandate from the Ordinary.

The Ordinary shall withhold his consent until he is convinced that the necessary means for building and maintaining a new church, and for supporting the ministers and defraying other expenditures of religious worship, will be forthcoming.

In order that the new church may not become a detriment to already existing churches, if the loss would not be compensated by the spiritual advantage of the faithful, the Ordinary shall, before giving his consent, hear the interested rectors of the neighboring churches, with due regard, however, to can. 1676. This canon rules that

[illegible] may use [illegible] every person of an [illegible] church, [illegible] believe he will be injured by the erection of a new church, may sue for an injunction before the judge. The effect is somewhat similar to legal estoppel, but is only temporary, until the judge has decided the case. But although the new building cannot be commenced while the case is pending, the builder may go on with his work, provided he gives security to restore everything to its condition before the work commenced in case sentence should be passed against him. The Code grants two months to the plaintiff or objector to prove his contention. This time may be prolonged or shortened by the competent judge. Hence the bishop has to bear in the interests of the interested parties between the parties and witnesses in [illegible] an ecclesiastical trial, at least in summary form.

Religious who wish to build a church or public oratory, although they have already received the consent of the local Ordinary for establishing a house in the diocese or city, must obtain his consent before they can build a church or public oratory in a specified place.

The blessing and laying of the corner stone belongs to those who are entitled to bless the church. Hence the Ordinary or his delegate, or the superior of exempt religious or his delegate, may bless and lay a corner stone.

Finally, it would be well if new churches are built and not even repaired in accordance with the time-honored laws of Christian architecture and the canons of sacred art.

Dedication

Dedication is performed either by consecration or blessing.

Consecration properly consists in anointing with

chrism the twelve crosses which are placed on the walls or pillars of a church, with the formula: *"Sanctificetur et consecretur hoc templum in nomine Patris et Filii et Spiritus Sancti,* etc." The bishop should go around the whole church three times. If this cannot be done, he should at least go about those parts which are accessible. If (*e. g.,* on account of bad weather) the prayers and sprinkling of the outside walls cannot take place, what is to be done? The S. Congregation answered as follows: Recourse should be had to the Holy See if possible; but if the consecration cannot be delayed, the solemn function may begin in the sacristy, or in the vestibule, or in some other convenient place, and the outside walls should be sprinkled as well as it can possibly be done; but the people are not to be admitted into the church from the beginning of the ceremony. One and the same bishop must consecrate the church and the main, or at least one, altar.

Blessing a church consists essentially in sprinkling the upper and lower part of the walls, either inside or outside, with holy water. All churches and public oratories must be at least blessed according to the formula in the Roman Ritual. Unless they are blessed, no titular feast may be celebrated in them. The fact that the cemetery is blessed does not create a presumption in favor of the church. Before the blessing is imparted, *divine service* may not be celebrated in a church. This means that Mass may not be said, the sacraments may not be administered, and there is to be no preaching; for these offices pre-eminently constitute *divine worship* (cfr. can. 2256).

If it can be reasonably foreseen that a church will be turned to profane uses, the Ordinary shall not consent to its being built, or consecrate or bless it after it is built.

Cathedral churches and also, as far as possible, *collegiate, conventual, and parish churches,* should be solemnly *consecrated.*

Churches built of wood, iron, or some other metal, may be blessed, but not consecrated.

An altar may be consecrated even if the church is not consecrated; but together with the church the main altar (or, if the main altar is already consecrated), a side altar must be consecrated.

Although churches may be consecrated on any day, it is meet that *Sundays* or *holydays of obligation* should be chosen for that purpose.

The consecrating bishop as well as those who have petitioned for consecration, shall *fast* on the day preceding the consecration.

At the consecration of a church or altar, the consecrating bishop, though he has no jurisdiction over the territory, may grant an indulgence of one year to all who visit the church or altar on the day of the consecration; of fifty days for the anniversary of the consecration; of 100 days if he is an archbishop, 200 if he is a cardinal.

The feast of the consecration of a church is to be celebrated annually according to the rubrics.

The latest decrees concerning this subject are: Provided the cathedral church has been consecrated and not merely blessed:

(a) The feast of the dedication is a primary feast and *festum Domini;*

(b) The anniversary must be celebrated as a first-class feast with octave throughout the diocese by the secular clergy and also by the religious clergy if the latter follow the diocesan calendar; if they have their own calendar, they must celebrate the anniversary of the dedication of the cathedral as a feast of the first class without octave;

(c) The anniversary must be celebrated on the day proper and not transferred to a Sunday;

(d) The anniversary of the dedication of the cathedral must be celebrated separately from the dedication of all the churches of the diocese; for the latter feast (*dedicatio omnium ecclesiarum dioeceseos*) a day may be designated by the Ordinary;

(e) The same rule must be observed by religious orders or congregations with regard to the celebration of the dedication of all the churches of their institute;

(f) The feast of the dedication of all the churches of a diocese (or institute) must be understood in the sense that each church celebrates its own dedication.

Each consecrated or blessed church must have its own *title,* which cannot be changed after the dedication.

The *titular feast* is to be celebrated annually according to the rubrical laws.

Churches cannot be dedicated to a *Beatus* without an Apostolic indult.

Church Bells

It is becoming that every church have *bells,* by which the faithful may be called to the divine service and other religious acts.

Church bells must be either *consecrated* or *blessed* according to the rites prescribed in approved liturgical books.

Their *use* is regulated exclusively by the church authorities.

Aside from the stipulations made by the donor, with the approval of the Ordinary, *a blessed bell cannot be used for profane purposes,* except in cases of necessity,

or by permission of the Ordinary, or by lawful custom.

The *consecration* or *blessing of bells* is reserved to the local Ordinary, and delegation to a simple priest can be given only by the Holy See.

Loss of Consecration

A church does not lose its consecration or blessing unless it is totally destroyed, or the larger part of the walls collapses, or the Ordinary turns the building over to profane uses, according to can. 1187.

It would be equal to complete destruction if the whole wall, apse and roof were removed. But a partial repair of, say, two-fifths of the walls would not require *re-consecration*. Thus, *e. g.,* if the framework or joists of a church were consumed by fire, or the framework of the tower had fallen upon the arch of the middle aisle and damaged the walls, no re-consecration would be required. Even if the whole church is successively repaired, re-consecration is not required, provided each part repaired is smaller than the parts not repaired. Furthermore, although the whole plastering (*intonaco*) were removed together with the crosses, and new plastering, stucco, or marble substituted, no re-consecration or re-blessing would be necessary; but the crosses should be painted anew or replaced by new ones. Even if the church is considerably enlarged and interiorly embellished with marble or stucco, as long as the old walls remain in the proportion of 3 to 2 or 5 to 3, no re-consecration or re-blessing is required, but the crosses, as stated above, should be renewed.

As to the reversion of a consecrated or blessed church to profane uses we refer to can. 1187. The Ordinary alone can do this, and hence, if a church was turned

over to profane uses by human malice or violence, it may be called defiled, provided can. 1172 is verified, but it is not execrated.

Effects of Consecration

One of the effects of consecration or blessing is that, in a properly dedicated sacred edifice *all ecclesiastical rites* may be performed, with due regard to parochial rights, privileges, and lawful customs. The Ordinary may, for a just cause, determine the *hours of service,* provided the church does not belong to exempt religious.

Desecration

By desecration (*pollutio ecclesiae,* as it was formerly called) is understood the moral violation of a church by which it is diverted from sacred to profane uses. It is induced only by acts described in the law and differs from *execration* in so far as the latter entails the loss of consecration or blessing, whilst desecration requires reconciliation or rehabilitation only.

A church is violated (or desecrated) by the following acts, provided they are certain, notorious, and committed in the building itself, to wit:

1. The crime of homicide;
2. Injurious and serious shedding of blood;
3. Impious or sordid use;
4. The burial of an infidel or one excommunicated by a declaratory or condemnatory sentence.

The desecration of a church does not entail the desecration of the cemetery, even though the latter adjoins the church, and *vice versa,* desecration of the cemetery does not involve desecration of the church.

The *consequences of desecration* are twofold: cessation of divine services and obligation of reconciliation. Until reconciliation is effected, it would be unlawful to hold divine services in a desecrated church or to administer the Sacraments or bury corpses there. Hence all liturgical services which have been instituted by divine or ecclesiastical law and are performed exclusively by the clergy, are strictly forbidden in a desecrated church. However, though the injunction is grievous, no penalty, either of censure or irregularity, is attached to the transgression.

If the desecration happens *during divine offices,* these must cease immediately. Thus the canonical hours, or preaching, or any function should be immediately stopped.

Reconciliation

A church which was only *blessed* may be reconciled by its rector or by any other priest with the (at least) presumed consent of the rector.

A *consecrated church can be validly reconciled* only by those mentioned in can. 1156. Hence the Ordinary of the diocese is entitled to reconcile consecrated churches of his own territory, which belong to the secular clergy or non-exempt religious or laymen; and the higher superior of exempt religious can reconcile churches belonging to his order.

However, says § 3 of can. 1176, in cases of serious and *urgent necessity,* if the Ordinary cannot be reached, the rector of a consecrated church may reconcile it and inform the Ordinary afterwards.

Reconciliation of a *blessed church* may be effected with ordinary holy water, whereas for a *consecrated church* water blessed according to the liturgical laws should be

used. However, not only bishops, but also priests who perform the act of reconciliation, may bless this water. The Roman Ritual states that a priest endowed with the faculty of reconciling a consecrated church,—hence also the rector of the church in case of necessity,—must wear amice, alb, cincture, stole, and cope of white color. He must follow the rite prescribed in the *Pontificale,* and consequently use water blessed by the bishop.

Decorum of the Church and Ius Asyli

All to whom it pertains shall take care that the churches are kept neat, as becomes the house of God; business and fairs, even though held for pious purposes, must be kept away from them, and in general everything that is incompatible with the holiness of the place.

Churches enjoy the *right of asylum,* which implies that criminals seeking refuge therein, except in case of urgent necessity, may not be taken out without the consent of the Ordinary or the rector.

Administration of Churches

The administration of funds destined for the repair and embellishment of cathedral churches belongs to the bishop and the chapter conjointly. However, since there are no chapters, properly so-called, in America, and the diocesan consultors cannot claim any title to the administration of cathedral funds, it follows that the bishop himself is responsible. He may entrust the cathedral pastor with this important matter, but the ultimate responsibility is the bishop's. This is more clearly enunciated in the

ruling of the first Westminster Provincial Council, 1852, n. 24: "The right to the temporal and spiritual administration of the cathedral church remains with the bishop, unless the Holy See shall have provided otherwise."

Offerings made in favor of a parish church or mission, or of a church located within the boundaries of a parish or mission, are to be administered by the respective pastor or missionary, unless the church in question has its own separate administration, distinct from the administration of the parish church or mission, or unless a particular law or lawful custom rules differently.

The pastor, the missionary, the rector of a secular church, be he a secular priest or a religious, must administer these offerings according to church law and render an account to the Ordinary.

Which are the *offerings* spoken of in the Code? The description of these may safely be taken from the Second Provincial Council of Westminster and the Third Plenary Council of Baltimore. They are: pew-rent, collections taken up during Mass, seat-money, and funds raised by lectures and house collections. Of all these, therefore, the administrator, as far as the repairs and embellishment of the church and divine service are concerned, must give an account to the Ordinary every year.

If other administrators, either clerical or lay, are chosen, these together with, and under the presidency of, the ecclesiastical administrator, constitute the *board of trustees* or council of the church fabric.

The members of this committee, unless otherwise legally provided, are appointed by the Ordinary or his delegate and may be removed by him for weighty reasons.

The law does not command the appointment of trustees, but only says, *if*. Hence, though prudence may dic-

tate the measure, as the Third Baltimore Council states, a bishop or pastor would by no means act contrary to the law if he did not appoint trustees. It cannot be denied that trustees have at various times in the past acted despotically and with little deference to the spirit and laws of the Church. Hence the Code desires that they be appointed and removed by the Ordinary or his delegate, who in this case may properly be the pastor. But the text admits another lawful way of choosing trustees, and hence the enactments of the Third Council of Baltimore are in perfect keeping with the Code and may be followed as a safe guide.

Can. 1184 commands the trustees to take due care of the church funds, according to can. 1522 and 1523, and not to interfere with the spiritual administration of the parish. They are especially forbidden to meddle:

1. With the functions of divine worship in the church;

2. With the manner and time of ringing the bells or the order of services in the church and cemetery;

3. With determining the manner of taking up collections, making announcements, and other acts which refer to divine worship or the adornment of the church;

4. With the arrangement of the altars, communion rails, pulpit, organ and organ loft, seats and benches, collection boxes, and other things belonging to divine service.

5. With the admission or rejection (because of unfitness according to traditional usage or the laws of the Church) of sacred utensils and other things which are destined either for divine worship or for the embellishment of church or sacristy.

6. With the manner of writing, arranging or keeping the parochial books and other documents which belong to the archives of the parish.

Repair of Churches

With due regard to special and lawful customs and concordats, and to the duty imposed by civil law:

I. The duty of repairing the *cathedral church* rests on the following in the order named:

a) On the *church funds* after deduction of the expenses necessary for the upkeep of divine worship and the ordinary administration of the church;

b) On the *bishops* and *canons* according to their respective income, after deducting the necessary support;

c) On the *faithful of the diocese,* whom, however, the Ordinary should induce by persuasion rather than compulsion to contribute to the necessary expenses according to their means.

A dilapidated church, which is unfit for sacred use and has absolutely no funds from which repairs might be made, may be used for decent profane purposes by the Ordinary. Whenever this happens, all liabilities and revenues are to be transferred to another church by the Ordinary, and if the abandoned church was a parish church, its title, too, must be transferred.

Oratories

An oratory is a place destined for divine worship, not, however, principally for the purpose of having all the faithful worship there publicly.

A *public oratory* is one built for the benefit of a corporation, or of private individuals, but in such a manner that *all the faithful have the right to frequent it,* at least at the time when divine services are held there.

Semi-public oratories are such as are built solely for the convenience of a certain community or class of

people, and hence are not open to all the faithful indiscriminately.

Private or domestic oratories are those erected in private homes for the convenience of a family or private individuals.

The oratories of resident or titular Cardinals and bishops, even though they be private, enjoy all the rights and privileges of semi-public oratories.

Public oratories are governed by the same law as churches.

In a public oratory, therefore, provided it has been dedicated for permanent divine worship by the authority of the Ordinary through blessing or consecration, all sacred functions may be held which are not forbidden by the rubrics.

Semi-public oratories can be erected only with the permission of the Ordinary. The superior of exempt religious may permit such an oratory to be erected for the convenience of his subjects.

The Ordinary shall not grant this permission before he has inspected the oratory either personally or through an ecclesiastical delegate, and found it properly fitted.

After the permission has been granted, the oratory may not be put to private uses without the authority of the same Ordinary.

In colleges and boarding schools for the young, in high schools and lyceums (intermediate classical schools), in fortresses and barracks (garrisons), in prisons and asylums, etc., one principal oratory may be erected, unless the Ordinary judges that necessity or great usefulness demand more. In lawfully erected semi-public oratories, all divine offices and ecclesiastical functions may be held, as far as the rubrics and the rulings of the Ordinary permit. In *private cemetery chapels,* mentioned in can.

1190, the *Ordinary of the diocese* may grant permission for several Masses to be said habitually.

In other *domestic oratories* the local Ordinary may permit one Mass to be said, not habitually, but upon occasion, in some extraordinary case, and provided there is a just and reasonable cause. This permission presupposes that the Ordinary has inspected the oratory and found it fit.

In domestic oratories erected by virtue of a papal indult, unless expressly provided otherwise in said indult, only one low Mass may be said daily, except on the more solemn feastdays, and no other ecclesiastical functions are allowed. Before the indult takes effect the Ordinary must inspect and approve the oratory. He may also, for just and reasonable causes other than those for which the indult was granted, permit a Mass to be said there even on higher feastdays, but only *per modum actus.*

Domestic oratories cannot be consecrated or blessed like churches. They may, however, and should receive the so-called *benedictio loci* or *domus novae,* as contained in the Roman Ritual.

Notwithstanding this defect of consecration or blessing, domestic oratories must be exclusively reserved for divine service and not be used for domestic purposes.

Altars

In the liturgical sense of the word an *immovable* or a *fixed* altar means the upper table with its supports, consecrated together as a whole with the table. A *movable* or *portable* altar is a stone, generally of small size, which is consecrated alone, or the same stone with its support, even though the latter was not consecrated together with the table.

In every consecrated church at least one, preferably the main, altar must be immovable; but in churches that are only blessed all altars may be movable.

The *table* of an immovable altar as well as a sacred stone must consist of one natural stone, whole and not easily crumbled.

In an *immovable altar* the table or stone plate must extend over the whole altar and be properly joined to the support; the support itself, or at least the side props or columns which support the table, must be of stone.

The *sacred stone* (portable altar) must be so large that at least the host and the larger part of the base of the chalice may find room thereon.

In an immovable altar as well as in an altar stone there must be, according to the rubrical prescriptions, a *sepulchre* containing *relics* of saints and closed with a stone. The *sepulchrum* is a small square or oblong opening made in the table or solid support of the altar, in which the relics are placed. In a fixed or immovable altar the *sepulchrum* may be placed either *behind the altar* or midway between its table and foot; or at the *front;* or midway between its table and foot; or *in the table* at its centre, somewhat towards the front edge, if its base be solid or hollow; or in the *centre on the top* of the support, if it be solid.

In *portable altars* the *sepulchrum* is located on top of the stone, usually towards its front edge. A portable altar consisting of two parts, the upper one of which was of stone, whereas the lower was of wood, with a hollow space between both for the relics, which thus touched both the stone and wooden parts of which the *sepulchrum* was formed, was declared inadmissible. The *sepulchrum* must be of natural stone, not of metal, brass or cement; the lid, too, must be of stone, though cement may be used for closing it. If cement was employed for the whole

sepulchrum, the altar must be reconsecrated; but the S. Congregation grants faculties to use the short formula and have it done by a delegated priest.

The *cement* to be used for closing the sepulchre must be blessed by the bishop according to the formula prescribed for fixed altars. The bishop must lay the cement on the sepulchre and close it, but not place his seal on it.

As to the *relics* to be placed in the sepulchre, it is understood that only *authenticated* relics are admitted. If they are authenticated, it matters not whether they are of known or nameless Saints. Doubtful or uncertain relics are not to be mixed with authenticated ones. If relics lie open and no attestation of their authenticity can be found, they must be replaced by authentic ones and reinclosed in the sepulchre.

The *quality of the relics* is not determined, except that they must be of *Saints.* However, it is the general practice, confirmed by official decisions, that they should be relics of at least one *martyr,* to which relics of confessors and virgins may be added. Whether these relics must be taken from the body (direct relics) or may be objects connected with the Saint (indirect relics), is nowhere stated, although some writers, like Gardellini, insist on direct relics.

It may also be added that there should be, at least for licit consecration, relics of more than one Saint. But it is permissible to enclose relics of a Confessor or Virgin, provided a relic of one martyr be also placed in the *sepulchrum.*

Besides those especially privileged, all bishops may consecrate portable altars; as to fixed altars can. 1155 must be observed.

Those *specially privileged* are the Cardinals, vicars Apostolic and prefects Apostolic, as well as their pro-

vicars and pro-prefects during the time of vacancy, abbots and prelates *nullius*. Besides these, all bishops, whether residential or titular, may consecrate portable altars. But fixed altars can be consecrated only by bishops and prelates or abbots *nullius,* if the latter have received the required blessing.

The consecration of a fixed altar, if performed apart from the dedication of the church in which it is stationed, may take place on *any day,* but it is becoming that this ceremony should be performed on a Sunday or holyday of obligation.

An *immovable altar* loses its consecration if the table (*mensa*) is removed from its support, be it only for a moment; but in this case the Ordinary may grant permission to a priest to reconsecrate the altar with the short rite and formula.

Note that the support of a fixed altar is consecrated together with the table, as a whole, and therefore any removal, no matter for what reason, of the *mensa* from its support, necessitates reconsecration. But if only the images, or titles, or ornaments are removed, whilst the support and the *mensa* remain united, reconsecration is not required.

Fixed as well as portable altars *lose their consecration*:

1. By a *fracture* which is regarded as very considerable by reason either of the break itself or of the anointed place; 2. if the relics are removed, or the lid of the sepulchre is broken or removed, unless it be done by the bishop or his delegate for the purpose of fastening, repairing, or replacing it, or for the purpose of inspecting the relics.

The bishops who have obtained the faculties granted

by the S. Rit. C., are entitled to make use of them as follows:

To appoint priests, dignitaries if possible, for the purpose of *consecrating* fixed and portable altars. Fixed altars must be consecrated as prescribed in the *Pontificale Romanum,* while portable altars may be consecrated according to the shorter formula of the *Rituale.* However, since the new edition of the Ritual has not yet been published, the formula is communicated to the Ordinaries by the S. Congregation together with the faculty itself. It has also been published in the *Acta Apostolicae Sedis.* *"In aliqua ecclesiastica dignitate constituta"* would, in the strict sense, imply that the ecclesiastic be vested, not only with precedence, but with jurisdiction in the external forum. This would include the vicar-general, the provosts and deans of cathedral and collegiate chapters, the *custos s. supellectilis* and the precentor. In countries where chapters are not established, only the vicar-general would be a dignitary, besides prelates of exempt religious. However, we hardly believe that the wording of the faculty should be taken in this strict sense. We rather think that all the so-called *monsignori,* prothonotaries and domestic prelates are included.

Furthermore, the text says: *"si fieri potest."* Hence, if there should be any plausible reason for appointing others, be it that there are no monsignori in the diocese, or that they are prevented from accepting the faculties, the bishop may designate other priests. However, the bishop cannot licitly delegate all priests of his diocese for this sacred function. It would, however, not be against the intention of the grantor to appoint the rural deans or some diocesan consultor—although these are not included in the term "dignitaries"—for this purpose.

Under the same clause, *viz.*, "if possible," etc., the bishop may designate some priests for *reconciling* altars, both fixed and portable. If the desecration was caused by a considerable fracture, or by the removal of the relics, or by a fracture or removal of the sepulchre, the shorter formula B may be used. If the table or *mensa* was severed from its support, formula A must be employed; though in this latter case no faculty is required, since the Code itself (can. 1200, § 1) grants this power, and therefore, the latter faculty may be communicated habitually to all priests.

As the church, so also the altars, at least those that are fixed, must have each its *own title*.

The principal title of the *main altar* must be the same as that of the church. For instance, if the church is dedicated to the Immaculate Conception, this must also be the title of the high altar. But besides this, the altar may also bear the name of a Saint.

With the permission of the Ordinary the title of a portable altar may be changed, but to change the title of a *fixed* altar requires a papal indult.

Ecclesiastical Burial

The Catholic Church has the right to possess her own cemeteries. Where this right has been violated, and there is no hope of recovering it, the local Ordinaries shall see to it that the civil cemeteries are blessed, provided the majority of the persons to be buried in them belong to the Catholic faith, or at least that Catholics are granted a separate space, which should be blessed.

If not even that much can be obtained, then the single graves must be blessed according to the liturgical books.

The bodies of all the faithful should be buried in

cemeteries, which may be solemnly or simply blessed according to the ritual books. The solemn blessing, as contained in the Roman Pontifical, can be imparted only by the Ordinary of the diocese, whereas the simple blessing may be imparted by the local Ordinary, if the cemetery belongs to the secular or non-exempt religious clergy. However, the bishop may delegate any priest for this function. If the cemetery belongs to exempt religious, the major superior or his delegate is competent.

Each parish should have its own cemetery, unless the local Ordinary assigns a common cemetery to several parishes.

Exempt religious may have their own cemetery, distinct from the common cemetery of the faithful.

The Ordinary of the diocese may permit other corporations and private families to have their own burial places separate from the common one and blessed like a cemetery.

Lots and vaults (*sepulchra particularia*) may be constructed on the parish cemetery with the written consent of the local Ordinary, or his delegate, the superior, either local or major, of the corporation on whose cemetery such a private sepulchre is chosen. These private sepulchres, or graves, or lots may, with the consent of the Ordinary or superior, be alienated. Alienation is, of course, here to be understood of a conveyance for burial purposes.

Priests and clerics should, if possible, have a special burial place, located in a more prominent part of the cemetery; if it can conveniently be done, the priests' lot should be distinguished from that of the lower clerics.

The burial-place for *infants* should be separated from that for adults, as there is also a special rite for the burial of infants. Exempt religious, too, if they have plots for elective sepulture in their cemeteries, should set lots apart for the burial of children.

The local Ordinaries, pastors and superiors, whom it concerns, shall take care that the inscriptions on the tombstones, eulogies, and adornments of monuments are in keeping with Catholic faith and piety.

No body that has been laid to final rest with ecclesiastical ceremonies can be *exhumed* without the permission of the Ordinary. The Ordinary shall not grant this permission if the corpse cannot be distinguished with certainty from other bodies.

The Ordinary may, after examining the special circumstances, determine—preferably at a synod and by means of diocesan statutes—when and under what conditions the *transportation of corpses* to the church or place of burial is inconvenient. If the parishes belong to different dioceses, the decision lies with the bishop in whose diocese the person died.

If a *cardinal* dies *in* the city of Rome, his body is to be brought for the funeral service to the church which the Roman Pontiff may designate for that purpose; if he dies *outside* the city, the corpse must be carried to the most prominent church of the city or town where he died, unless he chose another.

On the death of a residential *bishop,* even if he was a cardinal, or an abbot, or a prelate *nullius,* the body must be brought for the funeral service to the cathedral or abbatial or prelatial church, if this can be done conveniently; if not, to the more prominent church of the city or town, unless the prelate chose another.

Professed *religious* of whatever rank or dignity, except bishops, are deprived of the right of choosing their funeral church or burial place.

As the text speaks of bishops in general, all, resident as well as titular bishops, are included.

When a *cardinal* or *bishop* dies in his episcopal city,

outside the city of Rome, the cathedral canons shall provide appropriate funeral services and burial.

The priest who conducts a body to the funeral church or the grave-yard is entitled to pass with stole and raised cross through a strange parish or diocese, without the permission of either pastor or Ordinary.

Except for a weighty and just reason, approved by the Ordinary, the pastor has no right to exclude secular or religious clerics, or pious societies whom the family or the heirs wish to invite, from accompanying the body to the church or grave-yard and assisting at the funeral. But the clergy of the respective church should be invited above all others by the family of the deceased or his heirs.

The local Ordinaries, each one for his own territory, shall draw up a list of *funeral fees,* if none such exists, with the advice [not consent] of the cathedral chapter, and, if deemed advisable, with the coöperation of the rural deans and pastors of the episcopal city. In drawing up this list they shall take into account the lawful customs of the district as well as the circumstances of persons and times. The stole fees should be moderate and so determined that every occasion for quarrel and scandal is removed.

If the list contains several classes of funeral services, arranged by degrees, those interested may choose any of these.

No person who has died without Baptism may be admitted to ecclesiastical burial. Catechumens, however, or such as are preparing to embrace the Catholic faith, may be given ecclesiastical burial if they have died without baptism through no fault of their own.

Although baptized, one may be deprived of ecclesiastical burial if he has been expressly declared deserving of that penalty under the law.

Hence, unless they have given signs of repentance before death, the following are to be *deprived of ecclesiastical burial*:

1. *Notorious apostates from the Christian faith and persons who notoriously belonged to a heretical or schismatical sect, or to the Masonic sect, or other societies of the same kind.*

2. Persons *excommunicated and interdicted after a condemnatory or declaratory sentence.*

3. Those who have deliberately *killed themselves.*

4. Those who died in a *duel* or from a wound received in a duel.

5. Those who ordered their body to be *cremated.*

6. Other *public* and manifest *sinners.*

If it can be done without great inconvenience, the body of an *excommunicatus vitandus,* who was buried in sacred ground against the law, should be exhumed, with the permission of the bishop, and be buried in a lot especially assigned for the purpose.

II. HOLY SEASONS—FEAST AND FAST DAYS

(CAN. 1243–1254)

The *supreme authority of the Church* alone can establish, transfer, or abolish holydays as well as days of abstinence and fasting.

But the *local Ordinaries* may, *per modum tantum actus* (*i. e.,* for a transient reason and for the time being, but not habitually), prescribe the observance of a feastday or of a day of fast and abstinence.

Not only the local *Ordinaries,* but also the pastors, may in individual cases and for a just cause dispense their subjects from the common law of keeping feasts and from the observance of abstinence and fast, or from

both fast and abstinence. Ordinaries cannot issue synodal acts dispensing persons and families from the canon law, or grant a habitual dispensation. But they may, because of a great concourse of people, or for reasons of public health dispense the *whole diocese* or any place therein from the law of fasting and abstinence, or from both combined. This liberal concession renders special faculties (not particular indults; see can. 1253) superfluous. What is meant by a *great concourse of people* has been authentically explained by the Holy Office. It is not necessary that people from other towns or cities are present, but a multitude of inhabitants of the same city or town assembled for an occasion suffices. Of course, the occasion should be Catholic and religious, for instance, a centenary, a pilgrimage, a large meeting of Catholic societies, etc. As our county and State fairs offer a serious occasion for violating the law of fast and abstinence, such an event would constitute a sufficient reason for dispensing the participants.

Religious superiors of exempt clerical institutes enjoy the same powers as pastors with regard to all the persons mentioned in can. 514, §1.

The *patronal feast of a diocese,* city or town does not oblige by ecclesiastical precept, though the Ordinaries may transfer the external celebration of the same to the following Sunday.

Here may be inserted a decision of the President of the Pontifical Commission for the Authentic Interpretation of the Code, given in October, 1919. The question had been asked: Can it be safely held, as some authors taught, that, after the promulgation of the Code, flesh meat may be eaten more than once a day on days for which only fasting, but no abstinence is prescribed? The answer was: *"Negative."*

SECTION VII

DIVINE WORSHIP

(CAN. 1255–1321)

Worship exhibited to God, the Saints, and the Blessed Virgin Mary in the name of the Church, by ministers lawfully appointed for that purpose and through acts established by the Church, is called *public worship;* all other worship is *private.*

It is unlawful for Catholics to assist actively at or to take any part in, the religious services of non-Catholics. Passive or merely material presence may be tolerated for reasons of civil duty or honor, at funerals, weddings, and similar celebrations, provided no danger of perversion or scandal arises. In doubtful cases the reason for assisting must be grave, and recognized as such by the bishop.

Active participation means coöperation or assistance at non-Catholic services, for instance, by singing, playing the organ, taking up a collection during the services, or acting as usher. But it cannot mean a lifeless, motionless assistance with the continuous strain on the mind of not being allowed to pay attention to what is going on. Even passive assistance is a human act, and that not only *in specie,* but *in individuo,* and involves a double duty, *viz.,* to appear and conduct oneself like a gentleman, and not to take any part in the service that might reasonably be construed as approval of heretical worship.

A few points which the Ordinaries are sometimes asked

to decide may here be mentioned as decided by the Holy Office.

Assistance of Catholics at non-Catholic Services

Catholics are, as a rule not allowed to assist at baptisms, sermons, marriages of non-Catholics (heretics or schismatics), and are absolutely forbidden to act as *sponsors* for non-Catholic children who are baptized by heretics.

As a rule, Catholics are not allowed to assist at *marriages* of non-Catholics; but they may be suffered to assist *civilis officii causa,* provided all participation in the sacred rites is avoided and there is no danger of scandal.

This certainly means that Catholics cannot licitly act as witnesses to non-Catholic marriages, contracted before a non-Catholic minister, as such, *i. e.,* as *sacris addictus.* In marriages performed before a justice of the peace or a non-Catholic minister acting as a civil officer, there can hardly be any *participatio in sacris.*

Assistance of non-Catholics at Catholic Services

Non-Catholics must not be invited to sing in Catholic churches. A non-Catholic organist is tolerated if no Catholic can be obtained. Non-Catholics are not allowed to act as sponsors at Catholic baptisms, either alone or together with Catholics, by proxy or in person.

Non-Catholics may be invited to Catholic marriages, provided there is no *participatio in sacris,* and scandal is avoided. This again certainly implies that non-Catholics cannot act as witnesses at Catholic marriages.

Prayers and *devotions* are not to be permitted in churches and oratories without previous revision by, and express permission of, the local Ordinary, who shall re-

port difficult cases to the Apostolic See. The local Ordinaries cannot approve new litanies which are to be publicly recited. A bishop must and may revise all kinds of devotions, and if there is doubt whether prayers or invocations comply with the dogmatic and traditional requirements, he shall refer the matter to the Holy Office, which, if the doubt is purely ritual, shall report to the S. Congregation of Rites.

The local Ordinaries should carefully see to it (1) that the regulations laid down in the *sacred canons* on divine worship are carefully *observed;* especially (2) that no *superstitious practices* are introduced into public or private divine worship or into the daily life of the faithful; (3) that nothing is admitted which is contrary to *faith or ecclesiastical tradition,* or which savors of shameful money-making.

Religious, no matter how *exempt* they be, must abide by the laws which the local Ordinary makes for his territory. The same Ordinary is entitled to visit their churches and public oratories for the purposes of this prescription.

A distinguished place or seat in the church may be reserved for civil magistrates, according to dignity and rank. However, the liturgical laws must never be disregarded. These laws are summed up in the *Cæremoniale Episcoporum,* where we read that the seats reserved for nobles and illustrious laymen, magistrates and princes, no matter whether of the highest or the lowest rank, should be placed outside the sanctuary.

No Catholic may, without the express consent of the diocesan Ordinary, *have a seat reserved for himself and his family in church,* and the Ordinary shall not give his consent unless he is certain that the rest of the faithful can be conveniently seated.

All these concessions contain the tacit condition that the Ordinary may revoke them for a just cause and that no prescription confers a permanent right. For laymen, even by paying pew-rent for a number of years, acquire no personal right to pews or seats.

Lascivious or improper *music,* whether accompanied by the organ or other instruments, or rendered vocally, must be eliminated from the churches, and the liturgical laws concerning sacred music must be observed.

The Church has never condemned *polyphony,* which came into being in the fourteenth century, when the Plain Chant commenced to decline.

Religious women, if their constitutions or the liturgical laws and the local Ordinary permit them to do so, may sing in their own churches or public oratories, but only in a place where they cannot be seen by the public.

We do not intend to dwell upon church music, but one additional remark may be allowed. If the Gregorian Chant is to become *the* chant of the Church, its promoters should spare the Catholic world the sight of unseemly wrangling over its authentic or original rendition. They should be satisfied with the approved "Gloria's" and "Ite Missa est" as given in the latest edition of the Missal, and not try to force fifteen different ones down unmusical throats or into bad ear drums.

Worship of the Blessed Sacrament

The Holy Eucharist *must* be kept in the cathedral church, in the main church of an abbatial or prelatical territory *nullius,* of a vicariate and prefecture Apostolic, in every parish and quasi-parish church, and in every church adjoining the house of exempt religious, either male or female.

With the permission of the local Ordinary the Holy Eucharist *may* be kept in collegiate churches, in the principal public or semi-public oratories of charitable or religious houses, as well as in those of ecclesiastical colleges which are in charge of either the secular or religious clergy.

To keep the Blessed Sacrament in any other church or oratory besides those mentioned requires a papal indult. The local Ordinary may grant this permission only for churches and public oratories, for a just cause, and *per modum actus.*

In religious houses or charitable institutions the Holy Eucharist may be kept only in the church or principal oratory, and nowhere else; nuns are not allowed to keep it within the choir or convent enclosure. Every privilege to the contrary is revoked by the Code.

In cathedral, collegiate, and conventual churches in which the choir functions are held at the main altar, the Blessed Sacrament may, as a rule, be kept in another chapel or on another than the high altar, in order not to interfere with the services.

For any weighty reason which the Ordinary deems sufficient, it is permitted to keep the Blessed Sacrament away from the altar *at night,* in a secure and decent place, but always on a corporal.

At least one *lamp* must burn day and night before the tabernacle in which the Blessed Sacrament is kept. For this lamp, olive oil or beeswax must be used; if no olive oil is available, other oils may be used, according to the prudent judgment of the Ordinary, but they should, if possible, be vegetable oils.

The *consecrated hosts* reserved for the communion of the faithful or for the exposition of the Blessed Sacrament must be fresh and should be frequently renewed,

the old ones being duly consumed, so that there is no danger of corruption. Upon this matter the instructions given by the local Ordinaries should be scrupulously observed.

Exposition of the Blessed Sacrament

Private exposition of the Blessed Sacrament, *i. e.,* with the ciborium, may be held for any reasonable cause without the permission of the Ordinary in churches and oratories in which the Blessed Sacrament is lawfully kept.

Public exposition, i. e., with the *ostensorium* or monstrance, may be held in all churches on the feast of Corpus Christi and every day within its octave, at Mass and Vespers, but not on other occasions except for a just and weighty reason, especially of a public character, *and* with the permission of the diocesan Ordinary, which is required also for the churches of exempt religious. We cannot see the public character in cases where there are only a few religious gathered, no matter how mitigated a cause may be accepted.

The *Forty Hours' Devotion* should be held every year, on the appointed days, with the consent of the local Ordinary, in all parochial and other churches in which the Blessed Sacrament is habitually kept, and with the greatest possible solemnity. When special circumstances do not permit the exposition of the Blessed Sacrament except with great inconvenience or danger of irreverence, the local Ordinary shall see that it is exposed solemnly at least for a number of consecutive hours on stated days.

Worship of Saints, Sacred Images, and Relics

Only those servants of God who are counted among the Saints and Blessed by the authority of the Church may be publicly worshipped.

To those whose names have been canonically inserted in the catalogue of Saints is due the worship called *dulia. Saints* may be worshipped everywhere and by any act of *dulia,* but the Blessed (*Beati*) may be worshipped only in the places and manner expressly granted by the Roman Pontiff.

It is praiseworthy that nations, dioceses, provinces, confraternities, religious institutes, places and corporations choose patron *saints* with the approval of the Apostolic See. But *Beati* can be chosen patrons only with a special indult of the same Holy See.

The law strictly forbids the exhibition of *unusual images* in churches or sacred places, even of exempt religious, unless the approval of the local Ordinary has been obtained.

The Ordinaries shall never allow any sacred images to be publicly exhibited to the veneration of the faithful, unless these images are in keeping with the approved usage of the Church.

The Ordinaries shall never permit the exhibition, in churches or sacred places, of images which offend against dogma, decency, propriety, or which are apt to lead the ignorant into error.

The *solemn* blessing of images which are to be exhibited for public veneration is *reserved to the Ordinary,* who may, however, delegate this function to any priest. There is no rule or law prescribing the blessing of images.

Images which possess great value by reason of their antiquity, artistic finish, or the veneration given to them, and which have been exhibited to the worship of the faithful in churches and public oratories, when in need of repairs, must not be restored without the written consent

of the Ordinary, who shall seek advice from wise and experienced men before he grants such a permission.

Important relics (*insignes reliquiae*) are the entire body, head, arm, forearm, heart, tongue, hand, leg of a saint or blessed person, or that part of his body in which a martyr suffered death, but the relic must be entire and not merely a small particle.

Important relics of saints and blessed persons may not be preserved in *private homes* and *oratories* without the express permission of the local Ordinary. *Minor relics,* on the other hand, may be kept in private houses and reverently carried about by the faithful.

Only genuine relics may be exhibited for public veneration in churches, including those of exempt religious. The genuineness of a relic is ascertained by an authentic document, issued either by a cardinal, or by the local Ordinary, or by a clergyman who has obtained an Apostolic indult authorizing him to authenticate relics.

The vicar-general needs a special mandate to issue such a document.

Can. 1284 obliges the local Ordinaries to withdraw from public veneration all relics of which he knows for certain that they are *not* genuine.

Titular bishops are not empowered to authenticate relics. This privilege is expressly reserved to cardinals and Ordinaries, in the strict sense of the term, though vicars capitular or administrators are not excluded. Relics which are certainly spurious, the Ordinaries should withdraw and destroy.

The *public discussion of the authenticity of relics* should be avoided and may be forbidden by the local Ordinaries if the argument rests on mere conjectures, probabilities or prejudices, and if the methods employed are

apt to cast ridicule and contempt on sacred relics or their worship.

Relics of the true Cross enclosed in the pectoral cross of a bishop, after his death belong to his cathedral church, which shall hand them to the bishop's successor. If the deceased bishop ruled several dioceses, the relics pass to the cathedral church of the one in which he died; if he dies outside the diocese, the relics belong to the cathedral church of the diocese in which he passed away.

It is forbidden to *sell relics,* and hence local ordinaries, rural deans, pastors, and all those who have charge of souls shall take proper precautions lest sacred relics, especially relics of the Holy Cross, be sold on the occasion of hereditary transfer or at public auctions, and they shall see to it that such relics do not pass into the hands of non-Catholics.

Sacred Processions

Sacred processions are solemn invocations made by the faithful people marching in an orderly manner, under the leadership of the clergy, from one sacred place to another, for the purpose of arousing devotion, praising God, thanking Him, and imploring His help.

Ordinary processions are those held on stated days throughout the year, according to the sacred liturgy or the custom of the churches; *extraordinary* processions are those held for some public cause on other days.

Unless there be an immemorial custom to the contrary, or unless in the prudent judgment of the bishop local circumstances demand a deviation from the rule, only *one solemn procession is permitted* in the same place through the public streets *on the feast* of *Corpus Christi.*

This procession is to be arranged and led by the more prominent church of the respective city or town, and all the clergy and male religious orders, including the exempt, as well as the confraternities of laymen, must attend it. Only those regulars who perpetually live in strict enclosure, or dwell 3000 paces from the city, are excused from participation.

The other parishes and churches, including those which are in charge of regulars, may have their own processions outside the church during the Octave of Corpus Christi; but the local Ordinary should assign the day, the hour and the route for each parish.

The local Ordinary, after having heard the advice of his cathedral chapter, may for a public cause order extraordinary processions, which, like the customary and ordinary ones, must be attended by those mentioned in can. 1291, § 1.

With the exception of the Octave of Corpus Christi, religious, even though exempt, are not allowed to hold processions outside their churches and cloisters without the permission of the local Ordinary.

Neither the pastor nor anyone else can introduce new, or transfer or abolish the customary processions without the permission of the local Ordinary.

The Ordinaries shall take care that any abuses that may have crept in are eliminated, that the processions proceed in an orderly manner, with the modesty and reverence suited to such pious and religious acts.

Sacra Supellex

With the exception of rings and pectoral crosses (the relics of the holy Cross should be taken out and given to the successor), all articles of a bishop's *sacra supellex*

belong by law to the deceased prelate's *cathedral church,* with the exception, however, of such sacred appurtenances (*omnibus utensilibus*) which were bought by the deceased bishop with his own money and such as have not passed into the possession of the Church. However, for both of these two kinds of *sacra supellex* there must be legal proof that the money wherewith they were purchased was not church money and that the ownership was not acquired by the Church. This proof should be procured by a properly drawn up inventory. If the deceased bishop ruled more than one diocese, each of which has its own cathedral church, and if he made the required inventory, it will be easy to decide which of the cathedral churches furnished the money for the *sacra supellex.* If only one of them furnished the money, that one has an exclusive claim to the articles in question. If two or three dioceses contributed to the purchase, there are two possibilities: If no separate accounts are kept, but all revenues go to constitute the income of the bishop (*mensa episcopalis*), then the *sacra supellex* accrues to the cathedral churches in equal shares. But if the different dioceses keep separate and distinct accounts of their revenues, then the *sacra supellex* is to be divided and apportioned according to the salary, cathedraticum, etc., the bishop received from each diocese, and according to the length of time he governed each diocese.

Cardinals, residential bishops, and all other clerical beneficiaries are in duty bound to draw up a last will or other instrument, in a form acknowledged as valid by the civil law, in order that the regulations laid down in can. 1298–1300 may be made effective in the civil courts. For this purpose they shall in due time and legal form appoint some person of good character who, at the approach of their death, shall take temporary possession

not only of their *sacra supellex,* but also of books, documents, and other objects belonging to the Church and found in their residence, and deliver them to the lawful claimants.

The *cathedral church* must furnish the *sacra supellex* and everything else that may be required for the celebration of Mass and other pontifical functions free of charge to the bishop, no matter whether he celebrates privately or solemnly, in the cathedral church or in any other church of his episcopal city or its suburbs. Hence if the bishop celebrates within the city limits or its suburbs he may take the pontifical vestments along with him, and the cathedral church cannot object. But this holds only for the episcopal city, not for the whole diocese.

If a church is very poor, the Ordinary may permit that a moderate fee is paid by the priests who say Mass there for their own convenience, to defray the expense of the sacred utensils and other things required for the celebration of Mass. The S. Congregation has decided that beneficiaries who are compelled to say Mass in a church not their own, should contribute something for the candles, bread, and wine, and for the use of the vestments.

The *bishop,* but not the vicar-capitular, nor the vicar-general without a special mandate, may fix the amount of said offering, and no one, not even exempt religious, may charge more.

The bishop should fix this fee for the whole diocese at the diocesan synod, or else with the advice of his chapter or diocesan consultors.

The *sacra supellex* should be *blessed* before use, and it may be blessed by the following:

1. By all cardinals and bishops (hence also by titular bishops);

2. By local Ordinaries not endowed with the episcopal character for the churches and oratories of their respective territory;

3. By the pastors for the churches and oratories situated within their parishes, and the rectors of churches for their own churches;

4. By priests delegated by the local Ordinary, within the limits of their delegation and the jurisdiction of the *delegans;*

5. By religious superiors and priests of the same institute delegated by the superior for their own churches and oratories and those of nuns subject to them.

An article of *sacra supellex* that has been blessed or consecrated, loses its blessing or consecration:

(1) If it is so badly damaged or changed that its form is lost and it becomes unfit for its proper purpose;

(2) If it has been used for unsuitable purposes or exhibited for public sale.

Vows and Oaths

A vow is a free promise deliberately made to God concerning something possible and better; it obliges by reason of the virtue of religion.

A vow is *public* when it is accepted by a lawful ecclesiastical superior in the name of the Church; all vows not so accepted are *private.*

A vow is *reserved* if dispensation from it can be granted only by the Apostolic See.

The only private vows which are reserved to the Apostolic See are that of perfect and perpetual chastity and that of entering a religious order with solemn vows, provided they are made unconditionally and after the eighteenth year of age has been completed.

Ecclesiastical superiors, the pope, bishops, religious superiors, also in virtue of jurisdiction, may *suspend* the obligation of vows that are detrimental to the welfare of the Church, either universal or particular, or of their subjects. This holds good also of vows made before the *vovens* became dependent on the respective superior.

Vows that are not reserved may be *dispensed* from, for a just reason, provided the dispensation does not trench on rights acquired by a third person. Such dispensations may be granted:

1. By the *local Ordinary* to his own subjects as well as to *peregrini;*

2. By *religious superiors of exempt clerical institutes* to all those mentioned in can. 514, § 1;

3. By those to whom the power of dispensing has been granted by the *Apostolic See.*

Any good work promised in a non-reserved vow may be changed by the *vovens* into one better or equally good; but only those who may dispense according to canon 1313, can change it into a lesser work.

An *oath,* that is, the invocation of the Divine Name in testimony of the truth, cannot be taken except with truth, judgment, and justice.

Oaths demanded or admitted by Canon Law cannot validly be taken by proxy.

Those who are empowered to annul, dispense from, or commute vows, have the same power with regard to promissory oaths; but in case the dispensation involves a prejudice to a third person, who refuses to condone the obligation, the Holy See alone can dispense on account of the utility or necessity of the Church.

SECTION VIII

THE TEACHING OFFICE

(Can. 1322–1408)

Christ has entrusted to the Church the deposit of faith, in order that, by the continual assistance of the Holy Ghost, she might preserve the revealed doctrine holily and expound it faithfully.

The Church, independently of the civil authority, possesses the *right of teaching* all nations. Correlative to this right is the *duty of teaching* men, and on their part the duty of obtaining knowledge of the truth and embracing the true Church of God.

The *universal and ordinary magisterium* consists of the entire *episcopate,* according to the constitution and order defined by Christ, *i. e.,* all the bishops of the universal Church,—dependently on the Roman Pontiff.

The bishops, independently of the Pope, are true teachers of the flock confided to them. But neither singly nor in council do they share the infallibility which is their prerogative when acting as the ordinary teaching body of the Church under the leadership of the Sovereign Pontiff, or when united under the same at a general council.

To hold *disputations and conferences with non-Catholics,* especially in public, requires the special permission of the Holy See, or, in urgent cases, of the local Ordinary.

The *bishops,* in virtue of their jurisdiction, are obliged

to preach the Catholic faith, each within his own district or diocese. This duty they must perform personally, unless they are lawfully prevented. For since they are, as a rule, chosen for their personal qualities (*de industria personae*), they are in conscience bound to break the spiritual bread for their flocks.

Some of the *lawful reasons* which may prevent an Ordinary from fulfilling this duty, are mentioned in a papal decretal. They are: manifold pastoral or episcopal occupations, such as the diocesan visitation, attendance at councils or synods, bodily infirmity, hostile invasions, etc.

No one is allowed to preach the word of God unless he has received the *missio canonica* from his legitimate superior. The *missio canonica* may be given either by means of a special faculty, or by virtue of an office to which the right of preaching is attached by ecclesiastical law.

Catechetical Instructions

Canon 336 says that the bishops are strictly obliged to see to it that the important duty of imparting catechetical instructions, as outlined by the Code, is not neglected by those who are obliged to perform it, *viz.*, above all the pastors.

Priests and other clerics, who are not lawfully prevented, must assist their pastor in this most holy work, and may be punished by the Ordinary if they fail to do so.

If the local Ordinary is convinced that the help of religious is required for the catechetical instruction of his people, he may call upon the religious superiors, including those of exempt orders, and they are obliged to comply

with his demands, either personally or through their subjects, especially in their own churches, provided the regular discipline does not suffer.

Local Ordinaries are entitled to issue decrees with reference to the instructions of the people in Christian doctrine, and these regulations must be obeyed also by exempt religious, whenever they impart religious instructions to anyone not possessed of the privilege of exemption.

Preaching

The secular clergy as well as non-exempt religious receive the faculty of preaching from the local Ordinary for his respective diocese.

Religious of a clerical order obtain the faculty of preaching from their own superiors, according to their constitutions, in case they preach to exempt religious of their own order or to those persons mentioned in can. 514, § 1.

If sermons are to be delivered before others, including nuns subject to regular prelates, the faculty of preaching must be granted by the Ordinary of the diocese; and the preacher who addresses exempt nuns must also have the permission of the regular superior to whom they are subject. Preaching to nuns with solemn vows (*moniales*) is done at the grate, and the preacher is not obliged or permitted to enter the enclosure, which is here understood to be the papal *clausura.*

To preach for members of a religious lay institute, for instance, the Christian Brothers, even though they may enjoy exemption, a priest must obtain faculties from the local Ordinary in whose diocese the religious house is located. However, he cannot make use of his faculty

The same obligation is incumbent on *rectors* with regard to churches not subject to the pastor, and on the first dignitary (provost or dean), who has to ask the consent of the chapter before applying to the bishop for a faculty; also on chaplains or directors of confraternities if the preaching is to be done in their churches.

If the parish church is at the same time a capitular or confraternity church, the obligation of asking for permission for a strange priest to preach devolves on the one who has the right to perform the sacred functions.

Only priests and deacons should be given the faculty of preaching, and no other clerics should be allowed to preach, except in particular cases and for a cause which the Ordinary deems reasonable.

Laymen, even though they be religious, are *forbidden* to preach in church.

The local Ordinaries have the right to preach in every church of their diocese, including the churches of exempt religious.

With the exception of large cities, to which the law does not apply, the bishop may forbid sermons to be delivered to the faithful in other churches of a place in which he or another by his command is preaching at the same time.

Pastors are in duty bound to preach the word of God in the customary manner on all Sundays and holydays of obligation, especially during the Mass that is most largely attended.

This obligation is personal and cannot be habitually committed to another, except for reasons recognized as sufficient by the Ordinary.

The Ordinary may allow the sermon to be omitted on solemn feast-days, and, for good reasons, also on the one or other Sunday.

The Church desires that in *all churches and public oratories,* even though they are not parish churches, the Gospel or some part of Christian Doctrine should be expounded during the Masses that are attended by the faithful on holydays of obligation. If the Ordinary issues instructions to that effect, all priests, secular as well as religious, including those who are exempt, are bound to obey.

The Ordinaries should see to it that during Lent, and if expedient also during Advent, sermons are delivered more frequently in cathedral and parish churches.

Canons and other members of a chapter are obliged to attend these sermons, if held immediately after choir service, unless they are lawfully prevented; and the Ordinary, if he wishes, may compel them to attend under penalties.

Ordinaries shall see to it that the pastors arrange a *mission* for their flocks at least once every ten years.

Pastors, including religious, must abide by the regulations of the local Ordinaries in this matter.

The non-Catholics living in a diocese or parish are recommended to the benevolent attention of the bishop and the pastors, who should try to devise effective means and ways of bringing them into the one true fold.

In all other territories the care for non-Catholics is reserved to the Holy See.

Seminaries

A *seminary* may be broadly defined as a school either remotely or proximately destined for the preparation of candidates for the sacred ministry, especially the priesthood.

A *diocesan seminary* is a seminary under the control

of the local Ordinary, an *interdiocesan,* one under the control, generally *in solidum,* of all the bishops who send their students there, although interdiocesan may only mean that the control is entrusted to the local Ordinary, whilst other bishops are entitled to send their candidates. A *provincial seminary* is one subject to the bishops of an ecclesiastical province with the metropolitan as its head. A *pontifical seminary* is one under the immediate control and supervision of the Pope, who generally exercises this right through a delegate.

Every diocese should have a convenient seminary or college selected by the bishop, where, according to the revenues and size of the diocese, a certain number of young men can be trained for the clerical state.

In larger dioceses there should be established *two seminaries:* one as a college or *petit seminaire,* the other for the students of philosophy and theology.

If a diocesan seminary cannot be erected, or the philosophical and theological courses cannot be properly given in one already existing, the bishop shall send his students to another seminary, unless there is an interdiocesan or provincial seminary erected by authority of the Apostolic See.

When there are no endowments for the support of the seminary and its students, the bishop may

1. Command the pastors and other rectors of churches, even though they be exempt religious, to take up collections for that purpose at stated times; or

2. Impose a seminary tax on the diocese; or,

3. If these resources do not prove adequate, he may attach some simple benefices to the seminary.

The bishop shall, with due respect to the particular regulations given by the Holy See, decide what is necessary and profitable for the proper administration, govern-

ment, and progress of the seminary, and enforce his regulations.

Above all the bishop shall visit the seminary frequently, watch over the mental and moral training of the students, and, especially on the occasion of sacred ordinations, acquaint himself with the character, piety, vocation, and progress of the pupils.

Each seminary must have its statutes, approved by the bishop, in which the rules for the conduct of students and teachers are laid down.

Interdiocesan or provincial seminaries are entirely governed by statutes issued by the Holy See.

Every diocesan seminary must have *two boards,* one for discipline, the other for the administration of its temporal affairs.

The bishop is bound to ask the advice of these boards in important matters.

The bishop shall see to it that the students of the seminary:

1. Recite their morning and evening prayers in common, make a short daily meditation, and assist at Mass;

2. Go to confession at least once a week and frequently receive holy Communion with proper devotion;

3. Assist at solemn Mass and Vespers on Sundays and holydays of obligation, serve at the altar, and perform the sacred ceremonies, especially in the cathedral church, provided the bishop thinks this can be done without disadvantage to discipline and study;

4. Make a retreat for several successive days once a year.

5. Attend a spiritual lecture, which may be followed by a pious exhortation, at least once a week.

The seminary is *exempt* from the jurisdiction of the local pastor, whose place is taken by the rector or his

delegate for all who live in the seminary in all things except marriage and matters concerning which the Holy See has provided differently. But the rule laid down in can. 891, that the rector should not habitually hear the confessions of boarding pupils, must not be set aside.

The rector of the seminary and all other officials subject to his authority shall take care that the students obey *the statutes* approved by the bishop as well as follow the prescribed *plan of studies,* and that they are imbued with the true ecclesiastical spirit.

Schools

In every elementary school religious instruction should be given to the children according to their age.

Youths who *frequent the secondary or higher schools* should be given fuller instructions in Christian doctrine, and the local Ordinaries should see to it that these instructions are imparted by zealous and learned priests.

Such fuller instructions are contained in the larger catechism as well as the so-called evidences of religion, which should be imparted in such a way that they may be easily grasped and assimilated by the pupils.

Catholic children should not frequent non-Catholic, neutral, or mixed schools, *i. e.,* such as are open to non-Catholics. It is for the local Ordinary to decide, according to the instructions of the Apostolic See, in what circumstances and with what precautions attendance at such schools may be tolerated.

Duly created *doctors* are entitled to wear, outside of ecclesiastical functions, a ring studded with a gem and the doctor's biretta, and all other things being equal, doctors and licentiates should be preferred in appointments to ecclesiastical offices and benefices.

Where there are no *Catholic schools,* the church authorities, especially the local Ordinary, should establish such.

Catholic universities should be founded in provinces or countries where the existing universities are not imbued with Catholic teaching and feeling.

The *faithful should not omit to lend their aid, according to their ability,* to the establishment and support of Catholic schools.

It is desirable that the local Ordinaries should, with prudent judgment, send clerical students who excel in piety and talent, to a university or faculty either founded or approved by the Church, where they may complete their studies, especially in philosophy, theology, and Canon Law, and obtain academic degrees.

The *religious instruction* of the young in all schools is subject to the *authority and inspection of the Church.*

The local Ordinaries have the right and duty to watch that nothing contrary to faith and morals is taught or done in the schools of their territory.

The local Ordinaries also have the right to *approve teachers and text-books* of religion and to demand that teachers or books offensive to faith and morals *be removed.*

The local Ordinaries are entitled, either personally or through a delegate, to inspect any school, oratory, asylum, orphanage, etc., in all things concerning religious and moral education. This right of inspection includes the schools of religious, with the sole exception of purely internal schools for the members of exempt religious institutes.

Censorship of Books

The Church has the right to demand that the faithful shall not publish books which she has not previously ap-

proved, and for a just reason to forbid books published by whomsoever.

In this title on previous censorship, the term *books* comprehends *newspapers* and other *periodical publications.*

The following *books,* even though published by laymen, must be submitted to the ecclesiastical censure:

a) The *Books of Holy Writ* with annotations and commentaries.

b) Books treating of Holy Scripture, sacred theology, Church history, Canon Law, theodicy, ethics, and other *religious* and *moral disciplines.*

c) *Large and small prayer-books and devotional, catechetical, moral, ascetical, mystical, and the like books and pamphlets, even though* they seem to foster piety. To this class belong Bible histories, missals with vernacular translation, catechisms, the lives of Saints, the Imitation of Christ, and similar books.

d) *All writings which contain anything that particularly concerns religion and morals.*

e) *Sacred images,* no matter how printed, with or without prayers.

The permission to publish books and images may be granted by the local Ordinary of the author, or by the local Ordinary of the place of publication, or, finally, by the local Ordinary of the place where the books, etc., are printed. However, if any one of these Ordinaries refuses the *imprimatur,* the author is not allowed to ask it of another, unless the latter has been informed of the refusal.

Religious must obtain the permission of their superiors before applying for the episcopal imprimatur.

The secular clergy without the consent of their Ordinary, and religious without the permission of their higher

superior and of the local Ordinary, may not even publish books on secular subjects, or write for newspapers or other periodical publications, or serve as editors of such.

Episcopal permission is required when clerics wish to contribute to periodical publications or desire to act as managers or editors of such publications as *diaria, folia, libelli periodici. Diaria* are newspapers, daily, weekly, or biweekly. *Folia* are publications published more or less irregularly, of undetermined size or number of pages; be they leaflets or brochures. *Libelli periodici* are quarterly, monthly, fortnightly, weekly, etc., magazines or reviews.

Not even *Catholic laymen*—much less clergymen and religious—may write for newspapers, pamphlets or other periodical publications which are wont to attack the Catholic faith or morals. An exception to this rule may be made only for a just and valid reason, acknowledged to be such by the local Ordinary.

Books, summaries, booklets, leaflets, etc., containing *grants of indulgences,* may not be published without the permission of the local Ordinary. The express permission of the *Holy See* is required for publishing, in any language, *authentic collections of prayers and good works* enriched with indulgences by the Apostolic See.

Can. 1390 concerns the *publication of liturgical books,* or parts thereof, and litanies approved by the Holy See. Reprints of these must agree with the approved text, and the Ordinary of the place where they are printed or published must testify to such conformity.

No translations of Holy Scripture into the vernacular may be printed unless they have been approved by the Apostolic See or the bishops, and provided with notes drawn chiefly from the Holy Fathers and learned and orthodox writers.

Every diocese must have *officially appointed censors* for the examination of writings that are to be published. *Ex officio* means that there should be a regular censor, not merely one chosen for an emergency. The diocesan censors should be named in the Catholic Directory.

The *examiners,* in discharging their office, should set aside all human respect and be guided solely by the dogmatic teaching of the Church as contained in the decrees of the general councils, in papal constitutions and decisions, and in the consent of approved doctors. This does not mean, however, that any opinion or system tolerated by the Church is to be condemned because it does not happen to fit in with the individual views of the censor.

The *imprimatur* should be given in writing and be placed either in the beginning or at the end of the book, leaflet or image, together with the name of the grantor, and the place and date of the grant. It is strongly advisable to print the year of publication on the title page of every book—a practice which is neglected by some publishers.

If the imprimatur is denied, the reasons should be revealed to the author upon demand, unless a weighty motive counsels a contrary procedure.

Prohibition of Books

The right and duty to forbid books for a just cause belongs to the supreme ecclesiastical authority for the whole Church, and to particular councils and local Ordinaries for their respective subjects.

Recourse from a prohibition may be had to the Apostolic See, but only *in devolutivo.*

Abbots of autonomous monasteries and *superiors general* of exempt clerical institutes may, for just reasons,

forbid books to their subjects; but they must proceed together with their chapter or consultors.

The local Ordinaries, either personally, or, if necessary, through capable priests, should watch the books that are published and sold in their territory. This is the duty especially of the so-called *vigilance commissions* prescribed by Pius X against Modernism. Although the Code does not mention this law, the Holy Office has decided that it remains in force until the Apostolic See orders differently.

A forbidden book *may not be republished* until after it has been corrected and the one who forbade it, or his superior or successor, has granted permission to republish it.

Editions of the original text of Holy Scripture, of the ancient versions by non-Catholics, and translations into the vernacular made and published either by non-Catholics or by Catholics without previous censorship, are allowed to such as are in any way engaged in theological or biblical studies, provided, however, (1) that these editions are faithful and entire, and (2) that neither the introduction nor the annotations attack Catholic dogmas.

Cardinals, residential and titular bishops, and all other Ordinaries, under proper precautions, are not bound by the law of forbidden books, but they must obey the law of previous censorship.

Faculties

Ordinaries, i. e., all who go by that name in virtue of can. 198, § 1, may grant permission to their subjects to read books forbidden either by law (*i. e.,* the Code) or by a special decree of the Apostolic See, but they can impart this faculty only for individual books and in urgent

cases. The term *"pro singulis tantum libris"* means that each book must be distinctly mentioned by title and no wholesale permission may be issued. The plural form, *singulis libris,* permits the faculty to be given for more than one book at a time, provided they are duly specified.

If a general faculty has been given to Ordinaries for the benefit of their subjects, it should be communicated to the latter with discretion and only for a just and reasonable cause.

Ordinaries who have this general (either triennial or quinquennial) faculty, before granting either perpetual or revocable permission to their subjects, should carefully read the text of the grant, for it may be that some classes of books (*e. g., libri obscoeni* or books *ex professo* defending heresy and schism or undermining the foundations of religion) are excepted.

Those who have obtained a papal faculty for reading and keeping forbidden books, are not thereby allowed to read and keep books proscribed by their Ordinaries unless the indult which they have obtained contains the express clause that they may read and keep books *no matter by whom condemned.*

A license to read forbidden books does not in any way exempt one from the prohibition of the natural law against reading books which are to him a proximate occasion of sin. Therefore the local Ordinaries and all those in charge of souls should warn the faithful of the danger and injury caused by reading bad, especially forbidden, books.

The Holy Office grants to Ordinaries who ask for them these *faculties:*

1. To give permission to read and retain forbidden books and magazines, even such as avowedly (*ex pro-*

fesso) defend heresy or schism, or endeavor to uproot the very foundations of religion, with the exception of books which treat *ex professo* of obscenities. However, there must be some reason for granting the permission, and, besides, there are conditions attached to the grant. The *reasons* are thus stated in the faculty: the faithful are supposed to be prompted to ask for this permission by a desire to refute these errors, or need in the performance of the sacred ministry or of their office, or the pursuit of appropriate studies. The *conditions* are that this permission be granted only to their *subjects, viz.,* Catholics under their jurisdiction by reason of domicile or quasi-domicile; and, although it is not expressly stated in the faculty, it is not too much to say that the bishops may make use of this faculty even if these subjects are outside their territory. Another condition is that the permission be granted for not more than three *years* (*non ultra triennium*), no matter whether or not the grantees have made use of this permission. Lastly, the grantees must take proper care that these forbidden books and magazines do not fall into the hands of persons who are not permitted to read them, and, therefore, they must keep them *in proper custody.* It is evident that the Ordinary cannot control this last-named condition, but must rely on the good will and diligence of the grantee; and for their sake it may be added that "custody" should be understood in a reasonable sense, *i. e.,* these books should be kept under lock and key when they are not used for some time.

The Holy Office also grants the following faculty—not mentioned in Formulary III—that *students of both sexes,* who are compelled to frequent public schools for the pursuit of their studies, may be given permission to

read and retain forbidden books which they are directed to peruse, as long as these circumstances last. The conditions are the same as stated above.

The faculty contains the following *clausula: "oneratâ graviter Ordinarii ipsius conscientiâ super reali harum omnium conditionum concursu."* This clause, which occurs more than once in the Code, denotes not a condition in the proper sense, but rather an admonition designed to draw the attention of the delegate to the importance of the affair or business which is entrusted to him. Hence it does not affect the validity of the grant made by the *delegans* or of the permission given by the delegate, but it may affect the licitness of the permission. The latter enters the realm of morality, and therefore the conscience is charged. *What is conscience?* Barbosa [1] defines it as *"iudicium menti consonum in quodam naturali iure consistens."* In English it is usually defined as the practical dictate by which right reason here and now applies a principle of rectitude to a particular matter. But it is well to note that this practical judgment must be formed, not merely on one's own or private reasoning, but on the basis of law and the objective facts as presented by the case in question. The Ordinary, then, should consider the Canon Law and study the wording of the faculty, and also the petitioner's needs and condition. In doing so he need not be troubled by scruples; the *delegans* and the law want him to make use of the faculty if the conditions are verified. Neither does the adverb *graviter* change the nature of the clause, being only intended to increase the attention of the delegate. Some authors maintain that a faculty given under this clause can not be subdelegated. This is denied by others, and

[1] See *Tractatus Varii,* Clausula XXIV, ed. Lugdun. 1660, page 374.

is against the practice of the Roman Court, which, as the other faculties show, expressly states when subdelegation is permissible.

Profession of Faith

This must be made by all who attend a general or particular *council* or a *diocesan synod* with the right to cast either an advisory or a decisive vote. They must make their profession of faith before the presiding officer or his delegate; the presiding officer himself, before the synod or council. Newly created *Cardinals* must make profession of faith before the Dean of the Sacred College, the first in rank among the Cardinal priests and deacons, and the Camerlengo of the Holy Roman Church.

Bishops, residential as well as titular, abbots or prelates *nullius,* vicars and prefects Apostolic, must make it before the papal delegate; vicar capitulars before the cathedral chapter; those who have been promoted to a *dignity or canonicate,* before the local Ordinary or his delegate, and at the same time before the chapter; *diocesan consultors,* before the local Ordinary or his delegate and before the other consultors, who should therefore meet together with the bishop in a convenient place,—the cathedral or another church, the episcopal residence, or a priest's house.

The following must make profession before the *local Ordinary* or his delegate: (a) the vicar-general; (b) *pastors* and those provided with a benefice (even though manual only) to which the care of souls is attached; (c) *rectors of seminaries* and *professors* of sacred theology, canon law, and philosophy, at the beginning of each scholastic year, or at least when they assume office; (d) those about to be ordained subdeacons; (e) the censors of books, as mentioned in can. 1393; (f)

all priests who are to act as *confessors* or *preachers,* before they are given their appointment or faculties.

The *rector* of a *university or faculty* must make his profession of faith before the local Ordinary or his delegate.

Superiors of clerical institutes must make their profession of faith before the chapter or the superior who has appointed them.

The profession of faith is to be repeated whenever one assumes a new office, benefice or dignity, after giving up the former, even if the new office is of the same species.

The *Antimodernist Oath* is still in force and must therefore be taken as before (S.O., March 22, 1918).

SECTION IX

ECCLESIASTICAL BENEFICES

A *benefice* is a juridical entity, permantly established or erected by competent authority, and consisting of a sacred office and the right of receiving the revenues from the endowment attached thereto.

The various *sources of ecclesiastical endowment* are:

1) Property of any kind, movable or immovable, *owned by the benefice itself* as a juridical entity or fictitious person; for instance, a piece of land owned by a church, in which case the owner is the church, not the pastor, or the trustees, or the congregation;

2) Contributions imposed on families or corporations, such as tithes to be paid by the persons themselves (*decimae personales*), or on goods, produce, stock (*decimae praediales, reales, animalium*);

3) *Voluntary offerings of the faithful,* which belong to the rector of the benefice, such as pew-rent, at least in part, plate collections, and subscriptions;

4) *Stole fees,* to be paid according to diocesan taxation or lawful custom; but never manual mass stipends, as is clear from the text;

5) *Choir distributions,* except the third part of the same, if the entire revenue of the benefice consists of such distributions. This provision is manifestly intended for canons. Note that these revenues must be connected with the office permanently (*in perpetuum*).

This quality is styled by canonists *obiectiva perpetuitas* and constitutes an essential element of a benefice, but no longer of a parish.

Are there *canonical parishes or benefices in the United States?* This question has been settled by the S. C. Consistorialis and by the letter sent to our bishops by the Apostolic Delegate, Archbishop (now Cardinal) Bonzano, Nov. 10th, 1922.

The substance of the *Declaratio* of Aug. 1, 1919 (*A. Ap. S.*, XI, 346) is: Wherever the following three conditions are verified, there is a canonical parish, no matter whether its rector is removable or irremovable: (1) fixed boundaries, (2) parochial residence, (3) endowment or at least a solid reason to expect sufficient support to be forthcoming. The Ordinaries may erect *subsidiary parishes* or *chaplaincies,* but only within the limits of a canonical parish. The letter of the Apostolic Delegate says that a special decree of the Ordinary is

not necessary for the erection of a parish, if limits have been assigned. In other words, those parishes which met the three conditions mentioned above at the moment the Code went into effect were automatically raised to the rank of canonical parishes and are benefices.

Competent Authority and Requisites

Consistorial benefices are erected by the *Apostolic See* alone.

Besides the Roman Pontiff, the *local Ordinaries* can establish in their respective dioceses non-consistorial benefices, with the exception of dignitaries of cathedral and collegiate chapters (can. 394, § 2).

The vicar-general needs a special commission from his Ordinary for establishing a benefice.

Can. 1415 determines the endowment (*dos*) as follows: it must be stable, *viz.,* prospectively durable and *sufficient* for the maintenance of the building, the divine worship, and the ministers.

If the endowment is made in cash, the Ordinary should, in union with the board of administrators, see to it that the money is safely invested in *interest-bearing property or titles, i. e.,* stocks or bonds.

It is not forbidden to establish a parish or quasi-parish, even if a sufficient endowment is not immediately available, provided it can be reasonably foreseen that the necessary support will be forthcoming.

Before a benefice is erected, those *who are interested* in its erection should be *invited and heard,* this includes the parishioners, and others who may have to contribute or will probably suffer a detriment. But the omission of this formality does not invalidate the establishment of a benefice or parish.

The founder may lay down *certain conditions* in the charter with the *consent of the Ordinary, i. e.,* the diocesan bishop or the superior of exempt clerical religious if the benefice is to be a religious one. These conditions may be contrary to common law, but they must be *reasonable* and *compatible with the nature of the benefice.*

For the establishment of a benefice Can. 1418 requires a *legal document,* in which the place of the benefice is designated, and the endowment, rights, and obligations are described. This paper must be drawn up by the ecclesiastical authority, in our country with the coöperation of a notary public.

Union of Benefices

A union of benefices is called *extinctiva,* or *per confusionem,* when out of two or more suppressed benefices an entirely new one is created, or when two or more benefices are combined with a third so that they cease to exist as a juridical entity. In both cases the new benefice assumes all the rights and obligations of the suppressed or united benefices. However, if these rights and obligations conflict, only the more substantial and favorable ones are to be retained.

A union is called *aeque principalis* if two or more benefices, though united, remain as before, neither one becoming subordinate to the other. In this case each benefice retains its nature, rights and obligations, but one and the same cleric may hold titles to all. Two independent dioceses held by one and the same bishop afford an example of such a union (*e. g.,* Viterbo-Toscanella.) Two dioceses thus united may hold their synods either separately or together, have two vicars-general, distinct revenues, feasts, etc. The same rule applies to two par-

ishes united *aeque principaliter*:—their boundaries remain distinct, so that marriages must be performed in the respective parish churches, etc. There is no overlapping in this case, but one and the same pastor attends to both parishes and holds the titles to them.

Minus principalis is a union *per subiectionem* or *per accessionem,* in which the several benefices remain distinct, but one is made subordinate or accessory to the other. In this case the accessory benefice follows the principal one, upon which it depends, so that the clergyman who obtains the principal, *eo ipso* receives the accessory benefice, and is obliged to fulfil the obligations incumbent on both. No doubt this is the meaning of the term *subsidiary parishes* or *chaplaincies,* which the S. Congregation had in view when it directed our American bishops to create such within the boundaries of existing parishes wherever lack of endowment or shifting of the population do not permit the erection of new parishes.

A benefice is *transferred* when its seat,—for instance, a chapel or church,—is changed from one place to another, whilst the benefice remains the same as to its nature, rights, and obligations.

A *division of benefices* is made if two or more benefices are created out of one; this is also applicable to our parishes.

Dismemberment takes place when a part of the territory or the revenues belonging to one benefice are taken away and united with another benefice, or with a charitable or ecclesiastical institution, as, for instance, a seminary.

Transformation is a specific change of benefices, for instance, if a *non curata* would be turned into a *curata,* or a collegiate into a cathedral benefice.

Suppression is the extinction of a benefice; this cannot be lawfully done by the civil government.

The extinction, suppression, and dismemberment of benefices, when the revenues are withdrawn and no new benefice is erected; the union, whether *aeque* or *minus principalis,* of a religious with a secular benefice, or *vice versa;* and the transfer, division, and dismemberment of benefices belonging to religious, are reserved to the Apostolic See.

Rights of Local Ordinaries

Local Ordinaries may, for reasons of necessity or great and evident utility of the Church, either *aeque* or *minus principaliter unite parish churches* with one another or with non-curate benefices. However, a *unio minus principalis* of a parish with a non-curate benefice must be made in such a manner that the latter becomes an accessory to the parish.

This union cannot be performed by the *vicar-capitular,* on account of can. 436, nor by the *vicar-general,* unless he has obtained a special commission for that purpose.

Such a union must be made for good (*in perpetuum*), in order to avoid a cumulation or plurality of benefices. Reasons of *necessity or utility* would be poverty, a decrease of the population, the settling of quarrels, increase of divine worship, etc.

Ordinaries *may not unite* a parish with the *mensa* of the chapter or of the bishop, nor with a monastery or church in charge of religious (this being reserved to the Holy See), nor with any corporation, nor with cathedral or collegiate dignities or benefices. However, they *may* unite a *parish with the cathedral or collegiate church* if

the latter is located within the boundaries of the same, but in doing so must provide that the parish revenues are invested in the cathedral or collegiate benefice and the actual pastor or his substitute is paid a decent income (the *congrua*).

Can. 1424 forbids Ordinaries to unite either curate or non-curate benefices *against the will of the actual incumbents,* if the latter suffer damage by that union. It also forbids them to unite benefices of advowson (*iurispatronatus*), either lay or ecclesiastical, with benefices of free collation, without the advowee's consent, and to unite *benefices of one diocese with such of another diocese,* even though both are united *aeque principaliter* and governed by the same bishop. Finally it forbids Ordinaries to unite *exempt* benefices, or such as are *reserved* to the Apostolic See, with any others. The reason for this prohibition lies partly in the danger of alienation, partly in the confusion of rights and subsequent litigation.

If a parish has, by papal rescript, been united with a religious house as to *temporalities* only, the religious house is entitled to the revenues, and the superior must present to the local Ordinary a member of the *secular clergy,* who is then appointed pastor and receives his salary from the religious house.

If a parish is incorporated *pleno iure* with a religious community by the Holy See, the religious superior may designate one of his subjects to take charge of the same; but the local Ordinary has the right to subject the appointee to an examination and to give him his canonical appointment. Besides, the *pastor religiosus* is subject to the jurisdiction, coercive power, and visitation of the local Ordinary in whatever belongs to the care of souls.

For reasons of necessity, or great and evident utility,

Ordinaries may *transfer* the seat of a secular parochial benefice to another place within the boundaries of the same parish; but other benefices they may not transfer to the mother church, or to another church of the same or a nearby place, unless the church in which said benefices were founded has collapsed and cannot be restored. If such a transfer has to take place, the altars or chapels should, if possible, be re-erected in the church to which the benefice was transferred under the same titles which they had in the original benefice, and all the revenues and burdens of the former church are transferred to the latter.

Division of Parishes

Ordinaries may, for a just and canonical reason, *divide parishes* of any kind by establishing a perpetual chaplaincy or a new parish, or dismember the territory of such parishes; and they may do so even against the will of the rectors of the parishes, and without the consent of the people.

The *canonical reasons* for dividing or dismembering a parish are: great difficulty on the part of the people to come to the parish church or impossibility of properly attending to their spiritual needs because of too great a number.

Note the expression *"ea tantum";* only the two reasons mentioned are acknowledged as canonical. Hence a desire to create more parishes within a city or diocese cannot be considered a canonical reason for dividing the existing parishes. The *distance* has been sometimes described in Roman decisions [1] as of one or two hours, to be walked,

[1] S. C. C., June 22, 1743; Sept. 27, 1732; Jan. 29, 1735, etc.

of course, sometimes as 1500 *passus* (about a mile and a quarter), sometimes as three Italian miles, sometimes simply as a long and arduous way, especially if impeded by a torrent or river.

The phrase *"too great a number"* is relative; it means, if the spiritual welfare of the faithful suffers because there are too many to be taken care of. In 1905 and 1907 the S. Congregation [2] decided the case of a parish in charge of the Capuchins, which numbered about 6,500 souls and was well taken care of, but divided by the Ordinary. The S. Congregation first refused to sanction the decree, but new reasons advanced by the episcopal court finally led to a ratification of the same. However, neither the distance [3] from church nor the number [4] of parishioners has ever been definitely fixed by the Roman authorities, and it would be futile, therefore, to try to determine either. Local circumstances must be considered and the welfare of souls regarded as the supreme law. The latter does not, however, demand that a flourishing congregation, say, of four or five hundred or more families be broken up for the sake of a few "kickers" or to make a vain display of parishes. The fact that old parishes are sometimes loaded down with debts and new parishes often require heavy sacrifices should be duly taken into

(Richter, *Trid.*, 117, nn. 5 ff.); a distance of 30 miles would certainly be sufficient; S. C. C., March 28, 1903 (*Anal. Eccl.*, XI, 116 ff.).

[2] S. C. C., Jan. 21, 1905; July 27, 1907 (*Anal. Eccl.*, XIII, 23 ff.; XV, 338 ff.); a legacy of 30,000 lire was promised to the newly erected church.

[3] A distance of one Italian mile has never been considered sufficient cause for dismembration; see *Anal. Eccl.*, XIII, 27.

[4] One parish had 26,000 souls (=about 5,000 families), which number appeared too great for one pastor with his assistants

account. The faithful should not be needlessly burdened, especially in critical times such as ours. A parish with 300 or 400 families who live within a radius of about one mile and a half with good roads or streets, and sometimes street railways and automobiles, can easily be taken care of by the pastor with the aid of one or two assistants and certainly does not call for dismembration, unless perhaps dangerous tracks or factories, or undesirable quarters have to be passed by a considerable number of the parishioners.

The Ordinary, when he divides a parish, must assign sufficient revenues or provide in some other way for the new parish or chaplaincy. If no other source of revenue is available to provide the new parish with sufficient funds, these must be taken from the mother church, provided, however, that a sufficient income is left to the latter. Of course, this holds also if the new parish was detached from a religious parish. Here it is not superfluous to remark that the accounts of a parish in charge of religious should be kept strictly separate from those of the monastery. If there are any accrued funds, the salary of the pastor, as well as the expenses for the upkeep of the church and divine worship must first be deducted, and if anything is left, the old parish is bound to share it with the newly erected one.

But what if there are *debts on the old parish?* Here the injustice of some divisions becomes apparent. As it is entitled to a share of the revenues, the new parish has to share also the debts, for it would be unjust to saddle a debt which was calculated for 400 or more families, on 150 or even less.

to attend to properly; S. C. C., Jan. 25, 1879 (*A. S. S.*, XIII, 287 ff.)

If the chaplaincy or new parish is endowed from the revenues of the old, the latter, as the *mother church, is entitled to certain marks of honor,* which should be determined by the Ordinary, who, however, is not allowed to reserve the right of the baptismal font to the mother church. Sometimes a candle had to be offered, sometimes the baptismal water had to be gotten from the mother church, but the latter practice is now forbidden, and justly so, for a parish without a baptismal font is badly handicapped. The bishop may decide what signs of honor should be paid,—for instance, a procession, an invitation to preach, etc.

A parish detached from one which belongs to religious, does not become a religious parish, and the religious may not claim it, but to obtain it need the recommendation of the bishop and a papal indult.

Can. 1428 mentions certain *formalities* which the local Ordinaries must observe when they unite, transfer, divide, or dismember benefices. One of these is that an *authentic document* be drawn up, signed, and sealed with the diocesan seal. The other formality consists in hearing the *advice* of the chapter, or, with us, of the *diocesan consultors,* which is to be given *collegialiter, i. e.,* at a meeting. Besides, the bishop must also *summon all those who are interested* in the transaction, *viz.,* the parishioners or their representatives, and especially the *rectors of the resp. churches.*

Are these formalities required for the *validity of the act?* Although the consent is not required, yet the omission of the formalities appears to affect the validity of a division or dismemberment. This we deduce from can. 105, n. 1 °, which reads: *"Si consilium tantum, per verba, ex gr.: de consilio consultorum, vel audito Capitulo, par-*

ocho etc., satis est ad valide agendum ut Superior illas personas audiat." Hence he is obliged to hear their advice, although he is not bound to follow it.

A union, transfer, division, or dismembration made without a canonical reason is *invalid,* because every such act involves a change in the status of a church or benefice, and is therefore a species of alienation which no one inferior to the Supreme Pontiff can validly perform without a reason. Therefore if neither the distance nor the number of parishioners demanded a division, it would be invalid.

If the Ordinary deems the reason just and canonical, whilst the greater part of the congregation and the old pastor think it unjustified, the union, transfer, division, or dismembration takes effect, but *recourse is open to the Holy See.* This recourse, however, is not properly an appeal, and, therefore, does not suspend the effect of the episcopal decree, but devolves the matter on the S. C. Concilii. This is a rather tedious and sometimes costly affair.

The local Ordinaries may not impose on any kind of benefice either *perpetual* or *temporary pensions,* which last during the lifetime of the pensioner, but may, when conferring a benefice, for a just reason to be mentioned in the act of bestowal, impose a temporary pension to be paid during the lifetime of the beneficiary, provided, however, the latter's income is safeguarded.

On *parochial benefices* the Ordinaries can impose pensions only in favor of a pastor or substitute (*coadiutor*) when he leaves his office (as *rector* or *pastor emeritus*). But the amount of this pension shall never exceed the third part of the entire parish revenues, after all expenses and uncertain revenues have been deducted.

Pensions imposed on benefices either by the Roman Pontiff, or by other collators, cease with the death of the pensioner, who, unless expressly empowered to do so, may not alienate his pension.

Bestowal of Benefices

Cardinals may confer benefices in their titular churches or deaneries, and Ordinaries in their dioceses, because they have the priority or right in their favor (*habent intentionem fundatam in iure*).

The vicar-general, however, cannot confer benefices unless he has received a special commission for this purpose from his bishop. The *vicar capitular* or administrator can confer parochial benefices, but only according to can. 455, § 2, n. 3; other perpetual benefices he may not confer at all, on account of can. 436.

If the Ordinary does not make an appointment to a vacant benefice within six months from the time when the vacancy became known to him, the right of making the appointment passes to the Apostolic See, unless (can. 458) special reasons permit a delay, and an administrator is left in the place.

Secular benefices may be conferred on secular clerics only, religious benefices only on religious of the institute to which the benefice belongs.

Hence a benefice belonging, *e. g.*, to the Franciscans should not be conferred on a Benedictine, and *vice versa.* This rule also holds with regard to prelacies.

Installation of Beneficiaries

No one shall take possession of a benefice conferred upon him, on his own authority, or before he has made

the performance of such of the benefice engagements as are of a non-ecclesiastical character, the right of succession belongs to the next of kin, who may however relinquish another ecclesiastically—generally the next clerk.

The manner in which succession should take place is prescribed by particular—or general—charter—regulation, or by custom, and the precedent rule must be observed unless the Ordinary has granted a written dispensation in which case the dispensation takes the place of the formal regulation.

The regulation may be performed by proxy if a statutory reason to that effect has been issued by the Ordinary.

Rights and Duties of Beneficiaries
(Can. 1472 ff.)

Every beneficiary, after having taken canonical possession of his benefice, is entitled to all the rights, temporal and spiritual, attached to the same.

Among the temporal rights the foremost is that of enjoying the emoluments derived from the benefice, in so far as they are needed for the beneficiary's decent support. He is entitled to these revenues even though he may possess other property, but is obliged to devote the superfluous revenues to the poor or to charitable institutions.

Since the rule is particularly important also for pastors and curates who hold an office or office of benefices, it may be well to recall the different kinds of clerical property. They are:

(1) Personal, if derived from the clerical profession, e.g. by inheritance;

(2) Quasi-personal, or industrial if acquired by

the clergyman's own industry or diligence, from work which has no connection with his benefice, for instance, as a lecturer, a musician, an author;

(3) *Parsimonial,* if acquired from ecclesiastical or beneficiary revenues by living very frugally, so that something is left over and above the expenditures for decent support;

(4) *Beneficiary,* if acquired from the benefice after a decent support has been deducted, in other words, from the surplus revenues.

What a *decent support* is must be decided according to the circumstances of time and place. It includes moderate and customary hospitality, which has always been inculcated by the Church, and suitable recreation and provision for old age and inability, for instance, by life insurance or interest-bearing investments.

The Code speaks of *superfluous revenues.* What are they? Discarding the patrimonial and quasi-patrimonial, there can be question only of parsimonial and strictly beneficiary income. However, since the Code mentions *congrua,* it is not likely that parsimonial incomes are understood, and canonists generally do not apply the law to them. Hence only the *strictly beneficiary* revenues, which are left after one has provided for his decent support, can be understood. These are *superfluous,* and must therefore be applied, as the law says, *to the poor or to charitable institutions.* Note that this is a strict *obligation,* not *ex mera caritate,* but *ex iustitia.* Our text is quite explicit on this point, since it calls the beneficiary only the *usufructuary,* not the possessor or lord, of his benefice.

A beneficiary is obliged to fulfill faithfully the special obligations connected with his benefice, and to recite the *canonical hours* daily.

If he neglects the obligation of reciting the divine office without a lawful reason, he is bound to make *restitution* of the revenues received, in proportion to the extent of his culpable omission, and should give the amount due to the church fund, or to the diocesan seminary, or to the poor.

As guardian of his benefice, the beneficiary must administer the goods belonging to the same according to law.

If he has been culpably *negligent,* he is bound to *repair the damage,* and the local Ordinary shall compel him to make up for the loss. If the beneficiary is a pastor, he can be removed.

The *ordinary expenses* of administration and of collecting the revenues must be borne by the beneficiary.

Extraordinary expenses incurred for repairing the beneficiary's residence must be borne by those who are obliged to make these repairs, unless the charter of the foundation or mutual stipulation and custom provide otherwise.

Minor repairs, which the beneficiary has to make at his own expense, should be made as soon as possible, to avoid greater ones.

The local Ordinary is obliged to see to it, through the rural deans, that the property belonging to benefices is preserved and properly administered.

The property of the *mensa episcopalis* shall be carefully administered by the bishop. His residence must be kept in good condition, and if repairs are required, the expenses are to be paid from said *mensa,* unless others are obliged to defray them.

The bishops shall also take care that an accurate inventory is made of all the movable property belonging to the episcopal residence, and that everything is safely transmitted to their successors.

Since Ordinaries, too, are beneficiaries, these rules also apply to them, more particularly if the bishop retains the pastorship of the cathedral, for then he is a beneficiary in a twofold sense, namely, as bishop and as pastor of the cathedral parish.

Resignation
(Can. 184–191; Can. 1484–1486)

Resignation is the act of giving up an office or trust; here, the giving up of the episcopal or some other ecclesiastical office. The Code distinguishes express from tacit resignation. *Express* resignation, to be valid, must have certain qualities.

1) On the part of the *resigner* it is required that he be in full possession of his mental faculties (*compos sui*), which means that he is capable of a human act and entirely *free,* namely that no physical compulsion, grave fear or deceit was brought to bear upon him in connection with the resignation, and that it was not achieved by simony or error, because all such resignations are *ipso iure* null and void. He must have a *just reason* for resigning. Such reasons were pointed out in former law-texts as follows:

a) Advanced *age,* which means *senium,* or past sixty years. There is no definite limit established in law when this reason can be applied, but we may be permitted to observe that there can hardly be any doubt that a prelate at seventy-five or more is not usually in a condition to do full justice to his important office—*contra factum non valet disputatio.* But what should be done in this case? The well-known saying *"afflicto afflictio non est addenda"* and the so-called *connubium spirituale* between

the prelate and his benefice are certainly arguments which cannot be lightly set aside; they speak in favor of a considerate treatment of old age, as dictated by nature. On the other hand, however, there are just as weighty reasons against a too sentimental interpretation of the law. It is an axiom that *"Bonum privatum cedere debet bono publico"* and that "Offices are made for men, not men for offices," as the "sabbath was made for man, and not man for the sabbath" (Mark II, 27). There is a gap in the Code concerning this very important matter. We know, of course, of the expedient which has been applied in several instances, *viz.*, a coadjutorship, but this is sometimes a rather illusory remedy, and not always satisfactory. The State applies the pension system, and, we believe, a similar plan would be productive of good in the case of aged or feeble prelates and pastors.

b) *Sickness,* bodily infirmity and corporal deformity, which prevent one from securely, decently and satisfactorily performing the duties connected with the pastoral office;

c) *Consciousness of crime* and censure with the reputation at stake;

d) Deadly or lasting *enmities* between pastor and flock, to the scandal of others, especially outsiders;

e) Receiving another *office incompatible* with the one already possessed;

f) Entrance and profession in a *religious order.*

2) On the part of the *superior* it is required that the resignation be accepted by the grantor of the office or benefice, or his successor, or their delegate. Hence bishops and abbots must present their resignation to the Pope; intermediate religious superiors or prelates to the highest or supreme authority under their constitu-

tions or rules; minor offices may be resigned into the hands of the bishop or his coadjutor, if the latter has full power, of the vicar-capitular (administrator), but not the vicar-general, unless he has a special mandate.

3) The *form* in which resignation must be made is either in *writing* or verbally in the presence of two witnesses. If resignation is made by *proxy,* all the conditions of a *mandatarius* must be observed, as well as the prescribed formalities.

Regret or a change of mind on the part of the resignor does not render an accepted resignation invalid, although the resignor may again be validly elected, presented or appointed to the same office. However, a prelate who has resigned his office and obtained it anew, must reckon his seniority of rank from the date of the second appointment.

Tacit resignation (can. 188) is brought about and produces the effect of *ipso facto* vacancy without any further declaration in these cases: (1) by a valid (either simple or solemn) profession in a religious institute; (2) by neglect to assume the office to which one has been appointed within the *tempus utile* granted by law for the respective office; this time, for bishoprics, is four months from the date of confirmation or the *promotio facta in consistorio;* (3) by accepting another office incompatible with the former; (4) by public defection from the Catholic faith; (5) by contracting marriage, though it be only civil; (6) by doffing the ecclesiastical garb of one's own accord and with contumacy toward the Ordinary; (7) by enlisting in the army against the law of the Church (can. 141); (8) by culpable neglect of the law of residence.

As to the resignation of minor offices, such as pastor-

ships and chaplaincies, of assistants and rectors, it may suffice to state the following:

a) The resigner must expressly declare whether or not the benefice was one on the title of which he had been ordained; if it was the *titulus ordinationis,* his resignation cannot be accepted unless it be solidly (if necessary by oath) proved that the resigner has other means of support, otherwise the resignation is invalid;

b) If another title, for instance, patrimony, was substituted, this fact, too, must be established beyond reasonable doubt;

c) The consent of the Ordinary into whose hands the benefice was resigned must be given by means of a declaration that the substitution of the title has been lawfully made;

d) Conditional resignation, especially in favor of another, is forbidden, on account of the danger of hereditary succession.

An *exchange* or a *mutual transfer of benefices* can be made under the following conditions, laid down by the Code (can. 1487 f.):

a) That no other interested person suffer detriment therefrom;

b) That if the benefice be one of advowson, the consent of the patron be obtained;

c) That the exchange be made with the permission of the local Ordinary, or, more accurately speaking, of the bishop, because the vicar-general needs a special mandate and the vicar-capitular cannot give the permission at all;

d) That it be made either in writing or before two witnesses. Exchange of benefices reserved to the Holy See requires a papal indult.

Other Non-corporate Ecclesiastical Institutions (Can. 1489–1494)

1. Local Ordinaries may erect hospitals, orphanages and similar institutions destined for religious or charitable (spiritual or temporal) works; they may also endow such institutions with the character of ecclesiastical corporations.

The canonical nomenclature for a hospital, orphanage, or similar institution under ecclesiastical control is *domus religiosa,* a religious or rather *ecclesiastical* foundation or house. To deserve this name, an institution must be destined for works of piety or charity by the *ecclesiastical authority, i. e.,* the local Ordinary or an exempt religious superior. An institution founded by private persons without ecclesiastical authorization, even though its purpose be sacred, is called merely *domus pia.*

The text says: *"et per eius decretum persona iuridica in ecclesia constitui."* The *corporate character* attached to such an institution by the decree of the Ordinary may be taken in a twofold sense: as a corporation proper and as an institute or juridical entity. The corporate character can only be given if the house belongs to a community or religious corporation which owns and administers it, either by itself or in the name of the Church. For neither patients nor orphans constitute a corporation; they are merely beneficiaries or *destinatarii.* In the wider sense, the object (*finis*) of an institute is, by a legal fiction, the carrier or subject of its rights and duties, *i.e.,* generally the officials or representatives acknowledged by law.

2. Before the local Ordinary gives his approval, or

issues a decree, he must *assure himself that the foundation is really useful and sufficiently endowed,* or that it has prospects of obtaining sufficient funds. If he neglects this duty, the blame, together with such undesirable consequences as debts, etc., falls on him.

3. In all such institutions the rector or syndic shall *administer the temporalities* according to the by-laws laid down in the charter. His rights and obligations are the same as those of the administrators of other ecclesiastical property.

The *charter must contain an accurate description of the constitution,* purpose, endowment, administration, and government of the institution, also of the use to be made of the revenues and who is to succeed to the property in case the institution goes out of existence.

Of the charter and by-laws *two copies* must be made, one of which is to be kept in the archives of the institution itself, the other in the diocesan court.

The local Ordinary has the *right and the duty of visiting* all such institutions, even though they are corporations or otherwise exempt.

If non-corporate institutions are in the care of a *religious diocesan* community, they are entirely (*i. e.,* both in spiritual and temporal matters) subject to the jurisdiction of the local Ordinary; if they are in charge of a *pontifical* or papal religious community, they are under the supervision of the local Ordinary in whatever concerns faith and morals, pious devotions, and the administration of the Sacraments.

Although a pious or ecclesiastical institution may, in virtue of its charter, or by prescription, or by a papal privilege, have obtained exemption from the jurisdiction and visitation of the local Ordinary, the latter is *entitled to*

demand an account of its affairs, and every contrary custom is hereby reprobated.

If a founder insists that the administrators should not be obliged to render an account to the local Ordinary, the foundation cannot be accepted as an ecclesiastical one.

The local Ordinary shall see to it that the *pious desires* of the faithful, as set forth in the charter of such institutions, are *fully carried out.*

Without the *permission of the Apostolic See* such institutions cannot be suppressed or incorporated with others, or converted to purposes other than those prescribed by the founders, unless the charter provides differently.

SECTION X

TEMPORAL POSSESSIONS

The Catholic Church and the Apostolic See have the inherent right, freely and independently of any civil power, to acquire, retain, and administer temporal goods for the pursuit of their own ends.

Individual churches and other *corporations* established as such by the ecclesiastical authority, are also endowed with the right of acquiring, retaining, and administering their own property, according to Canon Law.

Can. 1496 vindicates to the Church, independently of any civil power, the right to *demand of the faithful* whatever is necessary for divine worship, for the support of her clergy and other servants, and for the pursuit of her proper ends.

If goods or objects belonging to the Church have received a consecration or blessing by which they are destined for divine worship, they are called *sacred.* This character, of course, adheres to corporeal things only. *Precious* objects are such ecclesiastical things as have a considerable value on account of the artistic skill with which they are wrought, or because of their antiquity or historical associations or on account of the material contained in them.

The Church has the *right of acquiring property by all just means,* which are permitted by either natural or positive law to *other citizens or individuals, i. e.,* by contract, donation, inheritance, etc.

The title or ownership is vested in the corporation itself, though of course dependently on the Holy See, *i. e.,* common law.

Here it may not be amiss to point out the different forms of holding church property. They are: (a) by *corporation sole,* which consists of one person, who transfers it to his successor in office; thus a bishop or pastor holds property in the name and as officer of the diocese or pastor; (b) by *corporation aggregate,* when the church members are the incorporators and whatever property they possess or acquire is vested in the body corporate; (c) in *fee simple,* which conveys absolute and direct ownership of the property, and was looked upon in former days as vested in the bishop for all diocesan property.

If a diocese or corporation is *divided,* so that part of its territory is united to another corporation, or a distinct juridical person is established out of the dismembered part, the *property* that belonged to the territory as a whole must be divided and the *debts* distributed by the competent ecclesiastical authority. This division

must be made according to the *principles of justice and equity,* with due regard to the will of the founders or donors, the acquired rights and the particular statutes governing the moral person who sustained the division.

The *proportion* to be observed is twofold: general and particular. The *general proportion* is indicated by the phrase, *"bonum et acquum."* But since it is a maxim that equity follows the law, it is evident that justice must be the first measure, to be taken not in the arithmetical, but in the geometrical sense, for it would be next to impossible to make such an equal division that cent for cent and inch for inch would be shared. The *particular proportion* is to be gauged by the acquired rights (because *melior est conditio possidentis*), the charter and by-laws. This same proportion is applied in can. 1501 to the case where a moral or juridical person *ceases to exist.* For this particular proportion means that all the property left by such an extinct person passes to the immediate superior. Thus, for instance, the property of an extinct parish goes to the diocese; if a diocese were suppressed, we suppose the S. C. Consistorialis would provide with regard to its property. If a monastery or convent of a centralized order becomes extinct, its property passes to the province, unless the constitutions rule otherwise.

Begging

Private persons, whether clerics or laymen, are *forbidden to beg alms* for any charitable or ecclesiastical institution or purpose, unless they have the *written permission* of the Apostolic See or that of their own and of the local Ordinary.

Who are the private persons here intended? All those

who beg without official or public capacity, authority or warrant, no matter whether they belong to the ranks of the clergy or laity. A *pastor* is no private person, and may therefore collect within the boundaries of his parish, but not beyond, without the required permission, because outside his own district he has no official capacity. Diocesan statutes should regulate this matter with due regard to needs, equity and justice, as also the charity of the people. The so-called chain-letters belong in the waste-basket.

Are *bishops* allowed to collect in another diocese than their own? If they have obtained the written consent of the respective Ordinary, they certainly are allowed to do so.

Private persons are distinguished from public persons, or persons acting as representatives of a public corporation, or an acknowledged society, or in an official capacity, just as we have private and public documents. If a governor or mayor makes an appeal to the State or municipality, it is a public appeal.

As to begging by religious, see can. 621–624. Begging may be done in writing—of which there is no end.

The Latin text *stipem cogere* means collecting money, or contributions in money, but the manner of collecting it is not determined; therefore, it may include any kind of means or ways. But the trouble is that letters cannot easily be controlled. To encounter this inconvenience, diocesan statutes should make it a point of emphatic, though charitable, ruling, which pastors should communicate to their people.

Canons 1504-1506 treat of certain contributions to be made either to the bishop, or to the diocese, or to pensioned clergymen, to which we may add the tax for the

seminary, although the Code mentions it in can. 1355 and 1356.

The Seminary Tax

The *seminary tax* must be paid by all who hold ecclesiastical benefices, including religious, and by all parishes and quasi-parishes, even though they have no other income than the offerings of the faithful. This *tax must be general and equal,* proportionate to the needs of the seminary, and the maximum rate should not exceed five per cent of the net income or capital taxed. This means that a poor parish, which can barely exist, after the expenses for the support of the pastor and worship and repairs have been deducted, will have to pay very little for the seminary. Take, for instance, the income to be about $3000; we ask, what remains after the necessary expenses have been defrayed? Perhaps $200 or $300, which would mean $10 or $15 for the seminary tax. It appears to us a rather doubtful means for spreading religion and training an efficient clergy to erect luxurious palaces for seminarians who may afterwards have to be satisfied with few comforts, and to tax struggling parishes beyond their means. *"Sapienti sat";* complaints are heard everywhere.

It must also be added that the Code (can. 1356) admits no appeal *in devolutivo* against paying the seminary tax; although, of course, recourse is not excluded if any one thinks he is not obliged to pay.

The law *reprobates* any contrary custom and abrogates all privileges, such as of orders of exempt religious or congregations.

The Cathedraticum

The *cathedraticum* is a sign of subjection to the local Ordinary, but not, properly speaking, a means of support for the bishop. *Who must pay it?*

a) *All churches and public oratories subject to episcopal* jurisdiction must pay the cathedraticum, even though they may not have been subject to it formerly. This rule certainly applies to all churches governed by secular clergy. Churches or public oratories in which exempt religious hold services for themselves only, and not for outsiders, or for these only *per accidens,* need not pay the cathedraticum. But if exempt religious have a parish church, even though it be an abbey or a convent church, or an incorporated public oratory, and even though one of their own number acts as pastor or chaplain, they are obliged to pay this tax.

b) *All holders of benefices not exempt* from episcopal jurisdiction must pay the cathedraticum.

c) *Lay confraternities* must pay the cathedraticum if they own, not merely a chapel erected in honor of a saint in some church, but a church or public oratory of their own, even though no benefice is connected with it.

The *amount* of this tribute was formerly established at two solidi (about $6) a year; but the Code leaves it to be determined by *provincial councils.*

A recent decision of the *S. C. Concilii* throws some light on this subject. A French bishop had asked permission to demand two per cent. of each Catholic, so that, for instance, a parish with 500 souls would pay ten francs, a parish with 1000 souls, twenty francs, and so on, in proportion to the numerical strength of each parish.

The sum appeared rather small, still the S. Congregation held that the cathedraticum, which should be a moderate and uniform "tax," should not be made a personal, pecuniary tribute, as this would be entirely foreign to the very notion of the cathedraticum. The answer, therefore, was: *"Prout exponitur, non expedire."*[1] The S. Congregation advised the bishop to adopt another expedient, if necessary, *viz.*, a charitable subsidy. We mention this decision because the cathedraticum is sometimes imposed by the bishop simply because he needs money. Such is not the idea of that contribution. We are quite ready to grant that custom has sanctioned this mode of supporting *our* bishops. But, nevertheless, according to can. 1507, the cathedraticum must be fixed by a provincial council or a meeting of the bishops of the province, and the approval of the Apostolic See must be obtained before any fixed rate takes effect. This applies also to other taxes.

Hence, even if diocesan statutes should fix these taxes, they would not bind unless can. 1507 had been complied with.

The cathedraticum is not subject to prescription.

Subsidium Caritativum or Special Contributions

When particular diocesan needs arise the local Ordinary (not the vicar-general) may demand, besides the seminaristicum and the pension mentioned in can. 1429, a contribution from all beneficiaries, secular as well as religious; but this contribution must be moderate and can be demanded only on extraordinary occasions, and, there-

[1] March 13, 2920 (*A. Ap. S.*, XII, 446): *"Liquet hac ratione non haberi merum signum recognitionis honoris, sed verum tributum fiscale, a quo indoles cathedratici maxime abhorret."*

fore, differs from the regular diocesan taxes, although it may be demanded in justice and under threat of penalty.

Ordinaries are forbidden to impose any other tax besides those mentioned for the benefit of the diocese or of a patron (advowee) upon churches, benefices, and other ecclesiastical institutions, subject to their jurisdiction, except on the occasion of their foundation or consecration.

It may be worth while to clear up some erroneous ideas concerning the nature and extent of this extraordinary taxation.

a) We comprise all these extraordinary taxes under the name of *subsidium caritativum*. We exclude, of course, all diocesan collections which have not an extraordinary, but a stable, character. But we include all special or particular assessments, or subscriptions, or "drives," or whatever term this subsidy may go by. It is defined by canonists as an extraordinary tax imposed upon subjects, for a manifest and reasonable cause, and demanded in a charitable rather than coercive manner. However, most canonists agree that this way of collecting the tax does not exclude compulsory means, and, if necessary, even censures. The Code, indeed, has not provided a special penalty in this case, although can. 2331, § 1, and can. 2347 might be alleged in its support. But it is not too much to say that censures should be rarely employed.

b) What are the *reasons* that justify the imposition of such a tax? Can. 1505 uses the general phrase: "When a special need should press the diocese" (*speciali dioecesis necessitate impellente*). This phrase was understood by former authors as including the following: expenses incurred on the occasion of the consecration

and installation of the bishop; great indebtedness incurred by the bishop for the utility or necessity of the whole diocese or the cathedral church; expenses made for the episcopal visit *ad limina* or to a council, either general or provincial. All this goes to show that the *diocese as such* (at large) must be concerned; that the need must be real, not fancied; that a solitary religious or charitable institution, though it may be useful to the diocese, if it is not an institution established by and for the diocese, cannot lay any claim to being subsidized by this means; that personal debts contracted by the bishop as a private person are not to be paid by means of a charitable subsidy, such as the canon permits.

c) What is the *amount* that may be demanded? Our text simply says that it should be a *moderate* tax and *extraordinary, i. e.,* not of regular occurrence. The canonists abstain from giving a fixed sum. One of them states that, since the law has not determined the amount, it should be gauged by custom, the income of the diocese, and the extent of the need for which it is demanded. However, there is another limit to the amount, as will be seen from the following answer to the question:

d) *Who must pay this tax?* The answer is clearly given in can. 1505: "*all beneficiaries,* whether secular or religious." Hence laymen cannot be compelled to pay this tax, neither can monasteries or religious houses, as they are not benefices. If religious hold or administer a parish either in their own name or in the name of the Ordinary—provided, in this latter case, they draw the salary of a real beneficiary—they are obliged to pay the tax like the secular clergy and to the same, not a larger, amount. In a word, *all pastors must pay it.*

Whether *assistants* or curates are obliged to pay it, is not so easily and clearly to be deduced from the text. For, although our parishes, if established in accordance with the Code (can. 1410, 1415, § 3), are and have been declared benefices, it does not follow that our curacies come up to the requisites of benefices; this is a point still to be settled. However, since they in one way or another share in the revenues of the benefice or parish, they appear to be liable to taxation, provided, of course, that the amount demanded is in strict proportion to the salary drawn, and that it is less than the amount paid by the pastors. We repeat that, since laymen cannot be compelled to pay this tax, it is evident that the *parish as such is not liable to payment,* because the Code expressly says that only beneficiaries may be taxed, and the parish as such is not a beneficiary in the canonical sense of the term. Furthermore, since beneficiaries are liable as such, it is evident that the pastors or curates *cannot be taxed on their private means,* such as patrimonial or quasi-patrimonial property, income, or revenues. Only what is connected with or flows from the benefice is subject to this tax. Besides, canonists as well as a decision of the *S. C. Concilii* make it plain that poorly salaried beneficiaries, whose income is barely sufficient for a decent livelihood, cannnot be compelled to pay the subsidy demanded.[2]

Attention should be paid to the term "beneficiaries" also for another reason. Where there is no proper canonical division of parishes with set boundaries, it would be rather difficult to apply the term "benefice"

[2] Here the text of the *S. C. Concilii, in Gerundinensi,* 27 Feb., 1663, quoted by Card. Gasparri: *I. "An episcopi pingues reditus habentes . . . possint exigere subsidium caritativum a suis*

to a parish. The consequence is quite evident: in dioceses which have no such division, there are no benefices in the canonical sense of the word, hence no beneficiaries, and, therefore, there is no strict right to demand such a tax, nor any obligation to pay it. *Videant consules!* Finally it will be well to observe can. 216.

We add that the canonists demand of the bishop that he ask the *advice of the cathedral chapter* (our diocesan consultors) before imposing such a tax. Also the vicar capitular (our administrator) *sede vacante* may levy the subsidy; and consequently those who enjoy the same power as administrators.

There is one more question attached to charitable subsidy, *viz.*, that of *providing for needy priests.* This would undoubtedly fall under the heading of can. 1505, in case the diocesan funds would be insufficient to make ends meet. But in this case what has been said as to the nature and extent of this subsidy must logically be applied also to the raising of the amount required to cover the deficit. Therefore it must be a moderate and extraordinary tax to be levied on the beneficiaries, not the parishes. But if there is a *clerical aid society* with its own funds and administration,—a society, we mean, which is intended to aid secular priests in case of need, it does not appear quite just to demand of religious who are pastors contributions from which they derive no benefit at all, because

clericis dioecesanis? II. An episcopi, quibus pro exigendo subsidio caritativo non obstat sufficientia sive exuberantia redituum, possint illud exigere nulla urgente causa et inconsultis eorum capitulis? III. An possint illud exigere a clericis beneficiatis, qui licet aliquos reditus habeant non consistentes in distributionibus quotidianis, nihil tamen eis superest ultra honestum victum, immo tales reditus vix sunt sufficientes ad praedictum eorum victum?—S. C. resp. ad I, II et III negative."

religious are generally taken care of by their respective communities. Thereby, as stated, we do not deny that the local Ordinary would be entitled to demand of the religious beneficiaries, as explained above, the subsidy based on can. 1505, and as far as this canon permits, also in case the funds of the clerical aid society should run so low that an extraordinary tax became imperative, provided it were moderate.

Ecclesiastical Pensions

Can. 1506 forbids Ordinaries to impose any other tax besides those mentioned, for the benefit of the diocese or a patron (advowee), upon churches, benefices, and other ecclesiastical institutions subject to their jurisdiction, except on the occasion of their foundation or consecration. All other taxes are against the common law (can. 1429) and looked upon as either simoniacal or as an unjust diminution of benefices. *Never* can a tax or contribution be imposed upon either manual or foundation *masses.*

Fixing of Taxes

Can. 1507 governs the manner of *fixing ecclesiastical taxes.* It should be done at a *provincial council* or meeting of the bishops, but needs the approval of the Holy See to have legal force. The taxes here comprised are (a) those levied for the exercise of voluntary jurisdiction, *i. e.,* dispensations, commutations (except matrimonial dispensations; can. 1056), and funeral taxes (can. 1234); (b) the *executoriae* or fees for the execution of papal rescripts; (c) charges for the administration of the Sacraments and sacramentals. Not included are

taxes imposed for ecclesiastical trials, which are subject to the rules laid down in can. 1909.

Last Wills

Cans. 1514 and 1515 emphasize the great care which the Church has ever bestowed on the faithful *administration* and *distribution* of property left by donation or bequest. They are specially intended for executors, who are obliged to attend to speedy execution, according to the term permitted by civil law. In the business of execution they must chiefly attend to the wording of the will. They are not allowed to substitute one pious institution for another, unless the document permits them to do so, nor are they permitted to apply a legacy "for the poor" to one poor person only. Among the poor those of the deceased person's home town should be favored and the most needy selected.

These general rules should also guide the *Ordinaries,* who, according to can. 1515, are the executors of all pious gifts, by donation as well as by last will (*mortis causa*). They may and must, at the canonical visitation, take cognizance of pious bequests, and other executors are obliged to render an account to the Ordinaries after they have discharged their office. Every *clause* which runs counter to this right of the Ordinary must be looked upon as nonexisting.

"Ordinaries" here includes the superiors of exempt religious.

Can. 1516 plainly shows that not only the *secular clergy* but religious, too, may be executors and trustees. If a cleric or religious receives a donation or a bequest *in trust,* he must notify his Ordinary of that fact and indi-

cate to him all property held in trust, movable as well as immovable, together with the obligations attached thereto. Should a donor have expressly forbidden the intervention of the Ordinary, no religious or cleric can accept the bequest or donation.[3]

The Ordinary must insist that the propery held in trust is *safely invested* and watch over the fulfillment of the testator's will, according to can. 1515. A safe investment, according to Roman practice, is that in land.

When a *religious* has received property in trust, the Ordinary referred to in § 1 and § 2 of this canon is the local *Ordinary* if the property is destined for a church of the town or diocese, or for the inmates of charitable institutions existing in that town or diocese; in all other cases the Ordinary is the superior of exempt religious; for only exempt clerical superiors go by the name of Ordinaries, according to can. 198.

To reduce, mitigate, or change testamentary bequests is reserved to the *Apostolic See,* which can proceed only for a just and necessary cause. The *local Ordinary* may act only if the founder has expressly granted this power to him, and he too is bound by reasons of justice and necessity, for both the natural and the divine law, as well as positive law, demand that the last will of the faithful be conscientiously executed and the money bequeathed by them expended for those purposes for which it was intended. It may not be applied for a seemingly better cause, or in a more suitable manner, because such a change would frustrate the last will of the testator and injure the Church, since the faithful would hesitate to make donations if they were not certain that the money would be properly applied. Hence, even the Sovereign Pontiff

[3] S. C. C., Aug. 7, 1909, (*A. Ap. S.*, I, 766).

is bound by the law of justice and necessity and cannot validly make a change or reduction in a will without a proportionate cause.

However, if on account of decreased revenues or for other reasons not due to faulty administration, the *obligations cannot possibly be complied* with, the Ordinary, after having heard those concerned, may equitably diminish the burdens, but must abide by the will of the founder as nearly as he is able. From this power is *excluded the reduction of Mass obligations,* which is reserved to the Holy See.

Administration of Church Property

The local Ordinaries should watch carefully over the administration of all church property located in their dioceses, except that which has been withdrawn from their jurisdiction. If lawful prescription gives the bishop the right to administer property otherwise not subject to his power, he may make use of this right. The reason is that the bishop has the *"intentio fundata in iure," i. e.,* the original right of administering all diocesan property, for the reason that he is the pastor of the whole territory.

Therefore § 2 of can. 1519 provides that the Ordinaries should regulate the whole business of the administration of diocesan property according to the *common law of the Church* and with due regard to special, lawful customs, which are the best interpreters of the law, and to circumstances. To this effect, and with these objects in view, they may issue, either in synod or outside, particular statutes which bind the whole diocese, provided they keep within the common law.

In order that this business be properly attended to,

every Ordinary shall establish in his episcopal city a *board of administrators,* consisting of the president, who is the bishop himself, and two or three capable men, experienced also in civil law if possible, to be appointed by the Ordinary after having heard the advice of his chapter (or consultors). Should there be in the diocese a particular law or custom which provides an equally effective mode of administration, this may be retained. But some kind of a council (*consilium*) there must be, according to the admonition of the wise man: "Do nothing without counsel, and thou shalt not repent when thou hast done."

Excluded from this council of administrators are all relatives in the first and second degree (*affines et consanguinei*) of the local Ordinary, unless the Apostolic See should grant a dispensation to the contrary.

Local Ordinaries shall not fail to call the council of administrators as often as any business of importance is to be transacted. Such business would be: alienation of property, for which a papal indult is required, the effective exercise of supervision over the administration of temporalities, and the rendering of accounts to be given annually by those who are obliged to do so. But the vote of these administrators is *advisory* only, unless a decisive vote is required in certain cases expressed in law or in the charter of a foundation.

The members of this board must take oath to the effect that they will perform their duty faithfully.

These administrators may be laymen, provided, of course, they are Catholics.

According to Roman as well as ecclesiastical law each institution should have an administrator, or, as he was formerly called, *syndicus.* Our Code prescribes the appointment of such syndics in addition to the diocesan

board of administrators. For all churches or pious institutions which have no syndics either by law or charter, the Ordinary should choose prudent and capable men of good repute to administer the property. The term of these administrators lasts three years, unless local circumstances make a more or less frequent change advisable. It is evident that our American parishes need no special administrators, because the parish priests themselves, aided by the trustees, administer the property.

If the charter or the will of the local Ordinary allows *laymen* to take part in the administration of ecclesiastical property, the whole administration must nevertheless be conducted in the name of the Church, and the Ordinary's right of visitation and of demanding a regular account and prescribing the mode of administration must be safeguarded.

Before they assume office, the administrators of church property, (a) must *take an oath* before the local Ordinary or the rural dean, promising that they will perform their obligations properly and faithfully; (b) must *sign an inventory,* which must be made accurately and distinctly, of all the immovable property, as also of precious movable goods, clearly described and appraised; or accept an inventory already made, which should account for things either lost or acquired in the *meantime.* (c) Of this inventory *two copies* must be drawn up, one of which must be kept in the archives of the administrative council and the other in the archives of the diocesan court, in each of which all changes in the property must be duly noted.

Administrators of ecclesiastical property should discharge their office like a good father of a family; in particular:

1) They should see to it that nothing entrusted to their care is lost or damaged;

2) They shall observe the rules laid down by both ecclesiastical and civil law, and the regulations imposed by the founder or donor, or by lawful authority;

3) They shall collect the revenues and fees (produce, rent, etc.), at the proper time, guard them safely, and use them in accordance with the will of the founder and the rules of the charter;

4) They shall invest the surplus profitably, with the consent of the Ordinary, and to the advantage of the Church;

5) They shall keep the books of income and expenditures in good order;

6) They shall keep the papers and title deeds of the church in good order and place them in the archives or safe of the church and copies or abstracts in the diocesan archives or safe.

All administrators, especially clerics and religious, must pay their employees a just and adequate wage; they should also see to it that the workingmen be allowed a convenient time for fulfilling their religious duties; they should never distract them from their domestic duties or from habits of thrift nor impose upon them more work than their strength, age or sex enables them to perform.

Canon 1525 *reprobates any custom contrary* to the duty of *rendering annual accounts to the local Ordinary.* This law is binding on clerical as well as lay administrators

(a) *Of every church,* including the cathedral church, and every public oratory, with the exception of churches belonging to *exempt religious* exclusively and solely by reason of their own service and for their own purpose, without being a parish or incorporated church by way of a

benefice. Parish churches governed by religious must also render an account of their administration.

b) An account must be rendered of any and all *charitable or pious institutions canonically erected,* no matter whether governed by secular or religious, even exempt, clergymen. Thus, if religious conduct a hospital or an asylum of any kind, an account must be given, the reason being that such charitable institutions concern the faithful, or the Church at large, and are often of the nature of foundations connected with a last will. This rule holds also concerning institutions under royal protection.

(c) The syndics of *each and every confraternity,* without exception, even though affiliated with an archconfraternity in the City of Rome, for instance, that of the "Good Death," and even though it be erected in the church of exempt religious, must likewise render an account to the bishop. Of course, this is to be understood only of such confraternities as have revenues of their own, and form at least a juridical entity.

If there is a special statute requiring that accounts be rendered to others designated for that purpose, the local Ordinary or his delegate must also be allowed to inspect the accounts, and all stipulations made for the purpose of excluding the Ordinary are void. Thus, if a municipality is entitled to receive the account of a pious foundation, which contains a clause to the effect that the local Ordinary be excluded, this clause would be invalid in the ecclesiastical court. The same is true of any contrary custom that may have crept in.

Administrators of church property must not *institute or contest a lawsuit* in the name of the church without having obtained written permission from the local Ordinary or, in urgent cases, from the rural dean, who shall immediately inform the Ordinary when he has granted

such a permission. If they disregard his advice and are defeated in the law suit, they are bound in conscience and by ecclesiastical law to make up for the loss sustained. *The church is not responsible* for contracts made by an administrator without the permission of the competent superior, unless the contract is favorable. This *favor ecclesiae* is to be extended to lawsuits as well.

Contracts—Alienation

Whatever the civil law of a country determines with regard to contracts, general and specific, named and nameless, as well as payments, shall be observed also in ecclesiastical law and with the same legal effects, unless the civil laws run counter to the divine law, and, unless the canons provide otherwise.

For the alienation of sacred relics the express permission of the Holy See is required, according to can. 1281, § 1. All other ecclesiastical property, whether immovable or movable, may be alienated under the following conditions:

1.° An appraisement of the goods must be made by conscientious experts;

2.° There must be a just cause, *i. e.,* urgent necessity, or evident utility on the part of the church, or piety;

3.° The competent superior must give his permission, for without it alienation would be invalid.

The superior may also prescribe other precautions and formalities, as the circumstances of the case may demand, in order to prevent damage to the church.

Canon 1531 rules:

a) That no thing should be *alienated* for less than what it was appraised at, because this would involve injustice and grafting;

b) That alienation should take place by *auction,* or

at least by advertisement of a public sale, unless circumstances advise the contrary; and the property to be disposed of should, everything being considered, be sold to the highest bidder;

c) That the sum realized from alienation should be invested safely and profitably.

Can. 1532 determines the *lawful superior* whose permission is required for valid alienation. This superior is:

1) The *Apostolic See, i. e.,* the S. C. Concilii (can. 250, § 2), if (a) *precious things* of any kind or amount are to be alienated, for they are not precisely appraised in our canon; or if (b) property is to be disposed of, the value of which exceeds the sum of 30,000 lire (or francs) *i. e.,* from about $6,000 to $10,000.

2) If the value of the property to be alienated *does not exceed the sum of 1,000 lire (or francs), i. e.,* about $200, the local Ordinary may proceed after having heard the advice of the board of administrators—unless the property is of very little value—and with the consent of those concerned.

3) If the value of the property to be alienated is *between 1,000 and 30,000 lire (or francs),* the local Ordinary may proceed, provided a threefold consent has been obtained, *viz.:* (1) that of the cathedral chapter (or diocesan consultors), which must be given *collegialiter,* that is, by vote at a meeting; (2) the consent of the board of administrators, and (3) that of the persons concerned. The penalties are stated in can. 2347.

4) If the property to be alienated is *divisible,* the parts which have been previously alienated must be mentioned in the petition for permission or consent, under pain of nullity. Hence no concealment is admissible, because it may endanger the validity of the transaction.

The rules here established concerning alienation proper apply also to any kind of contract by which the status of a church might be deteriorated.

Donations

Prelates and rectors are allowed to make *only small and moderate donations* from the *movable property* of the church, according to legitimate local custom; large donations may be made only for a just reason, as reward, piety, or Christian charity. Donations made against this rule may be revoked by the successors.

Donations made to rectors of churches, secular or religious, are supposed to be made *to the church,* unless there is reason to presume the contrary.

In order lawfully to refuse a donation made to a church, the rector or superior of the same needs the permission of the Ordinary. An illegal refusal, if a loss is caused thereby, justifies an action for *restitutio in integrum* or indemnity.

The Code does not permit a donation made to a church and lawfully accepted by the latter, to be revoked on account of ingratitude or enmity on the part of the prelate or rector.

If, for some lawful reason, church property has to be pawned or mortgaged, or debts have to be made, the lawful superior who is entitled to grant permission, according to can. 1532, shall first hear all concerned, *i. e.,* the administrators and rectors, or syndics, and endeavor to pay off the debt as soon as possible.

For this purpose the Ordinary should determine the amount of the annual payments. If the church has fixed revenues, this may be done by subtracting the necessary

amount therefrom. But if no fixed endowment or revenues are available, as is the case with most of our churches, a "sinking fund" should be established to wipe out the debt.

When *sacred things* are sold or exchanged, the fact that they are consecrated or blessed shall not influence their valuation, *i. e., no higher price* can be lawfully charged for a consecrated or blessed object merely because it is consecrated or blessed. To do so would be simony.

The administrators may convert *notes payable to bearer* into other titles or investments which are safer than, or at least equally safe and profitable as, the former.

In doing so, however, they must avoid every species of trading or speculation, and, besides, obtain the previous consent of their Ordinary, of the diocesan board of administrators, and other interested persons.

Immovable church property cannot lawfully be sold or leased to the administrators themselves, or to persons related to them in the first or second degree either by blood or marriage, without special permission from the local Ordinary.

Leasing or Renting

Land belonging to a church should not be rented except by public auction or announcement, as stated in can. 1531, § 2, and exact conditions must be laid down in the lease or rent contract as to the boundaries, appropriate methods of cultivation, payment of rent, and the necessary safeguards for the fulfillment of these conditions.

Anticipated payments being excluded according to can. 1479, the *following rules* must be observed in leasing or renting church property:

1) If the rental exceeds 30,000 lire (or francs) and the

lease is made for more than *nine years,* a *papal indult* is required; if the contract is made for less than nine years, the *local Ordinary* may give the permission, with the consent of his cathedral chapter (or diocesan consultors), the board of administrators, and those interested.

2) If the rental is between 1,000 and 30,000 lire (or francs) and the lease runs *more than nine years,* the local Ordinary may grant permission, with the consent of those just mentioned; but if the contract is made for *less than nine years,* the local Ordinary has only to consult with the board of administrators and obtain the consent of those concerned.

3) If the rental is *less than* 1,000 lire (or francs) and the contract reads for more than nine years, the local Ordinary has to consult with the board of administrators and obtain the consent of those concerned; if the contract is for nine years or less, the administrators themselves may sign the contract and notify the Ordinary.

Pious Foundations

The term "pious foundations" signifies temporal goods conveyed to some ecclesiastical juridical person with the perpetual or long-continued obligation to say Masses or to perform certain ecclesiastical functions or works of piety or charity, in consideration of the revenues received from said endowment. Every foundation, after it has been duly accepted, has the nature of a bilateral contract: *"do ut facias."* Hence can. 1545 demands that the local Ordinaries should fix the *minimum of endowment* below which no pious foundation may be accepted, as well as the manner in which the interest is to be distributed. This procedure is somewhat similiar to fixing the amount of mass stipends.

Canon 1546 commands that *no more obligations* be accepted than can be complied with, and that none be accepted *for less* than the customary tax. The *written consent* of the local Ordinary is required for the acceptance of foundations by ecclesiastical persons. This consent should never be given unless the Ordinary is certain that the institution is capable of fulfilling the new as well as any old obligations it has assumed or is about to assume. The Ordinary shall also see to it that the consideration is in proportion to the obligations, according to local custom.

All money and movable property assigned as an endowment, must be deposited in a safe place, to be designated by the local Ordinary. This, with us, is generally a bank. Titles and other valuable papers may be put in a safety vault. If stock or produce were offered, the easiest way would be to sell them.

The Ordinary shall then consult with those interested, *i. e.,* the founder or his heirs, those who have accepted the foundation, and the diocesan board of administrators, as to the safest and most profitable way to *invest* the property for the benefit of the foundation. Each investment of this kind must be accompanied by express and specific mention of the *obligation* resting on the investment.

Pious foundations, even when made orally only, must be *set down in writing;* one of the records must be kept in the diocesan archives, the other in the archives of the institution which is obliged to fulfill the obligation.

In every church a list of the obligations arising from pious foundations must be kept in a safe place.

Besides the book for manual stipends, mentioned in can. 843, § 1, there must be another, kept by the rector, in which each and every obligation, whether perpetual

or temporary, is duly entered, as also the record of fulfillment (when a mass was said) and the amount of the alms,—so that an accurate account may be rendered to the local Ordinary.

As to pious foundations made and accepted by churches belonging to exempt religious, even if they be parish churches, all the rights and duties of the local Ordinary mentioned in canons 1545–1549, devolve on the *major superior exclusively,* according to the constitutions of the respective institute.

It may be added that the Constitution "*Nuper,*" of Innocent XII, from which these laws are chiefly taken, revokes and annuls all contrary privileges granted to any order.

The reduction of obligations arising from pious foundations is reserved to the Apostolic See, unless the charter contains an express provision to the contrary and with due regard to can. 1517, § 2, which admits the reduction of some foundations under certain conditions, but excepts masses.

Here is a list of *Faculties* which the *S. C. of the Council* is wont to give.

1. To grant, for a space of five years, a *reduction of perpetual masses,* if the revenues have been diminished and no one can legally and conveniently be compelled to increase the original stipend. The reduction is to be made in proportion to the amount of stipends in vogue in the respective diocese. The priests benefited by the reduction must annually notify the diocesan chancery of the fulfillment of the reduced obligations (see can. 1550).

2. To grant, for a space of five years, a *transfer of masses* which, according to the foundation-charter, should be said on certain days or altars, or in specified churches,

within the same diocese, provided there be a real need for such transfer, and provided that divine worship suffer no curtailment therefrom and the people experience no inconvenience. From this grant are excluded foundation-masses which can easily be said by increasing the stipend.

3. To *transfer,* for a space of five years, *excess masses* to another diocese, if care be taken that the greater number be said in the diocese and, for the rest, the prescriptions of the Code be observed. But the Code has no prohibitive clause as to sending Masses outside the diocese or as to where they must be said; only rules are given as to certain precautions (see can. 837–840).

4. To grant permission to begin *"anticipating" Matins and Lauds* at one o'clock P. M. when there is a reasonable cause. This faculty may be usefully inserted in the diocesan faculties.

5. To allow *alienation of church property* to the amount of $10,000 in the U. S., and 15,000 pesos in South America. The Holy See must, however, be informed of the alienation made which, besides, is only permissible in case of necessity and when no time is left for recourse (see can. 534 and 1532). In such a case can. 81 may be applied.

In n. 3, transferring Masses to another diocese, masses are understood which should be said *in* that particular diocese by the intention of the donor. Hence, the faculty does not insinuate that superfluous masses, which the donor has left to the prudent judgment of the priest to say anywhere, may not be said somewhere else. For the Ordinaries have no power to make such a restriction, this being not only beyond but against the Code, as the same S. C. has decided.[4]

[4] S. C. C., Feb. 19, 1921 (*A. Ap. S.,* XIII, 228 f.)

It may appear strange to our modern notions of business and money values to read of only $10,000 for alienation. However, the law as well as the restrictions are very wise and practical, and taken from life. For the Church is not a "business proposition," nor a bank or stock company. When a "crash" comes, the outside world is "tickled" to see churches and clergymen lose, the indignation against superiors who strained the "widow's mite" is sounded in unkindly epithets, and those who are wont to sneer at laws arise in arms.

PART IV

ECCLESIASTICAL TRIALS

Ecclesiastical trials constitute the judiciary power of Ordinaries. The Code has distributed the entire subject matter into three parts, the first of which lays down the rules for trials in general, the second concerns the process of canonization, and the third regulates the procedure in some particular affairs. Of the first and second part we shall only touch on a few important points, to give more extensive consideration to the matrimonial and administrative procedure.

SECTION I

TRIALS IN GENERAL

The Code defines an ecclesiastical trial, or *iudicium ecclesiasticum,* as the lawful discussion and settlement before the ecclesiastical court of a disputed matter of which the Church is entitled to take cognizance.

Such are matters which concern faith and morals, the Sacraments and sacramentals, divine worship and ecclesiastical offices and persons, especially the clergy.

The Competent Judge

As there is a competent court, so there is a privileged court, in other words, there is ordinary and extraordinary, *viz.,* reserved competency.

On account of the *primacy of the Roman Pontiff,* the Holy See may be appealed to in any civil or criminal case, in any stage or instance, from any phase a trial may have taken, and from anywhere in the whole Catholic world. But this recourse to the Apostolic See does not suspend the exercise of the jurisdiction of the ordinary or delegated judge who has commenced a trial by issuing the lawful summons. Suspension of jurisdiction is attached only to an *appeal,* properly so-called. Hence in case of mere recourse, the judge-in-ordinary may proceed with the trial and pronounce final sentence, unless he has been duly informed that the Apostolic See has called the case before its own court.

Besides, the Roman Pontiff reserves to himself the so-called *causae maiores* as follows (can. 1557):

(a) The cases of actual *rulers* of nations, their sons and daughters, and proximate successors, provided, of course, their cases are brought before the Supreme Pontiff, as often happened when rulers still called themselves Christian;

(b) The cases, civil as well as criminal, of *cardinals* and legates of the Apostolic See;

(c) The criminal cases of bishops, titular as well as residential.

To the *tribunals of the Apostolic See* are reserved:

(a) The civil cases of residential bishops, with the exception mentioned in can. 1572, § 2;

(b) All cases of dioceses and other exempt corporations immediately subject to the Roman Pontiff, such as exempt religious organizations and monastic congregations. If the Roman Pontiff calls other cases before his tribunal, that judge is competent whom he designates. This happened in the case of the English Ladies founded by Mary Ward.

The Local Ordinary

Aside from cases reserved to the Roman Pontiff or the Apostolic See, or cases appealed to this supreme court, all cases must be tried by the *local Ordinary,* who may exercise this power personally or by proxy, but must proceed according to the rules laid down in the following canons. This is the law, new as well as old, for every diocese. *Exempt religious,* of course, are bound to go before this tribunal only in cases defined by law (can. 616); otherwise their competent judge is the respective superior (can. 1579).

If a case concerns the *rights or temporal property of the bishop,* of the *episcopal mensa* (revenues), or of *the diocesan court,* it may, with the consent of the bishop, be tried in a body by the diocesan tribunal, consisting of the official and two senior synodal judges, or it may be brought before the court of the immediate superior.

The *antiquiores* are those longest in office, and the immediate superior would be the metropolitan. If the latter is a party to the trial, the immediate superior is the Delegate Apostolic, provided his instructions give him that power; otherwise, Rome.

In order to establish the competency of two or more Ordinaries who may perhaps be entitled to judge, the law lays down the following rules:

1.° All actions concerning forcible deprivation or *disseissin,* of which more under can. 1698, where the term *spolium* recurs;

2.° All cases touching *benefices,* even though non-residential, which must be decided before the Ordinary in whose diocese the benefice is located;

3.° All cases of *administration,* which must be tried

before the Ordinary in whose diocese the administration was conducted;

4.° All cases in which *pious bequests* or *legacies* are involved, must be tried before the Ordinary in whose diocese the testator had his domicile, unless the question turns about the mere execution of a legacy, when it may be settled according to one of the following reasons of competency.

By reason of *domicile* or *quasi-domicile,* under can. 1561, anyone may be sued before the local Ordinary, who in this case also has jurisdiction over an absent subject. This court is the chief, ordinary, and natural forum for trying the defendant, even though he be absent from the diocese. If the plaintiff be absent, the summons suffices to render him in contempt in case he does not appear.

This forum concurs with any other mentioned, except, of course, the one spoken of in can. 1560.

Besides these reasons establishing competency, the Code acknowledges the following: the reason of *res sita,* or location of the litigious object; the reason of contract, and crime and connection.

The diocesan court must follow the rules laid down in the Code for trials in general (can. 1555, § 2).

Concerning the officials and board of judges the Code rules that *every bishop is obliged to choose an official* with ordinary judiciary power. This office is distinct from that of the vicar-general. Only in case the diocese is small, and there is not much business, may the bishop entrust the vicar-general with this office. How small or how large a diocese must be to require an *officialis,* is difficult to say; it depends upon territorial extent as well as upon the number of the Catholic people and clergy.

The *officialis* and the bishop form but *one* tribunal. Consequently, no appeal is possible from the one to the

other, or *vice versa.* Besides, the *officialis cannot render judgment in cases* which the bishop has *reserved to himself.* There is no doubt some similarity between the offices of the vicar-general and the *officialis;* but there is also a difference, for the bishop cannot lawfully curtail the power of the vicar-general beyond the cases mentioned in law, whilst the power of the *officialis* is entirely subject to his good pleasure. Of course, the bishop has to make it clear which cases he has reserved to himself; otherwise the *officialis* may proceed, because his power is ordinary.

The *officialis* may be given *assistants,* but their power is not ordinary, nor must they be looked upon as quasi-judges *in solidum.* At least this seems to us a natural assumption because otherwise there would hardly be any unity of government.

The *officialis* (as well as the *vice-officialis*) must be *priests* in good standing, doctors of canon law or otherwise experienced, and at least thirty years of age. They are *removable* at the bishop's pleasure. Their office does not cease during the vacancy of the episcopal see, nor may they be removed by the vicar-capitular (administrator). But they need ratification by the new bishop.

When the offices of vicar-general and *officialis* are held by one and the same person, the office of vicar-general, but not that of *officialis,* ceases when the episcopal see becomes vacant. If the *officialis* is elected vicar-capitular (administrator), he shall appoint another *officialis.*

The synodal judges, elected either at, or outside of a synod, should be not more than twelve in number. They must be *priests* of approved morals and experts in canon law. They may be chosen from another diocese if, to use a colloquial expression, the necessary "timber" is not to be found in the diocese itself. Their office is *delegated* by

the bishop, by virtue of which fact they may assist in handling ecclesiastical trials.

No discrimination is made between synodal and prosynodal judges because in law the latter are regarded as synodal judges pure and simple. One of their prerogatives consists in being chosen as *counselors* by the judge, who is entitled to select two of them in every trial.

Can. 1576, § 1, rules that to a *board of three judges* are reserved the following cases: (a) civil or *contentious* causes turning about the bond of sacred ordination (*vinculum s. ordinationis;* see can. 1993), the marriage tie (not mere separation), and the rights and property of the cathedral church; (b) *criminal* cases which concern privation of an irremovable benefice, which we believe must also be applied to the case of privation (not mere removal) of an irremovable pastor; or which concern the inflection or declaration of excommunication, which may also touch laymen.

To a *board of five judges* are reserved all criminal cases which involve the penalty of deposition, of perpetual privation of the ecclesiastical habit, or of degradation.

§ 2 permits the Ordinary to entrust the collegiate tribunal of three or five with the cognizance of other cases, especially such as are more difficult and important by reason of circumstances of time, place, or person, or of the matter involved, for instance, in a mixed marriage when satisfaction is to be decided and the persons concerned are of high social standing. The same rule may be applied to clerics who hold important offices and to tendencies which are peculiar to a whole province or generation.

§ 3 commands the Ordinary to choose the two or four judges who constitute the collegiate tribunal together with the president, who is no one else than the diocesan *offi-*

cialis, in turn, from among the *synodal judges,* as, for instance, is done by the Roman Rota, where three proceed *per turnum.* The *turnus* may be taken either by seniority, or one senior and one junior, etc. But the Ordinary may depart from this rule if he deems it advisable, and select ecclesiastics who are not synodal judges.

Can. 1577 determines the *mode of procedure* to be followed by the board of judges. They must proceed *collegialiter, i. e.,* in a body, and give sentence by majority vote. Thus, if there are three judges, including the *officialis,* there must be two votes cast for or against a sentence; if five judges vote, at least three votes are required to pronounce either an interlocutory or definitive sentence.

We said, "including the *officialis,*" for § 2 of can. 1577 rules that the *officialis* or *vice-officialis* is the *president* of the tribunal, and it is his duty to direct the trial and decree what is required for administering justice. Of course, he must abide by the general rules prescribed by the Code; but, like any other judge, he may follow the dictates of reason as long as these do not clash with the essentials of justice.

Although the *officialis* or *vice-officialis* is *ex officio* the president of the trial, the *bishop* himself may preside, and, of course, also vote when a sentence is to be pronounced. However, since no one should be judge in his own case, the bishop is precluded from presiding in all matters concerning himself or his diocesan court, according to can. 1572, § 2. Besides, according to canon 1578, it is highly advisable that he leave the decision of criminal and contentious (civil) cases, especially those of importance and consequence, to the ordinary tribunal presided over by the official or vice-official, lest he incur an odium which might impair his authority.

Note should be taken of the beginning of this canon,

viz.: "Every contrary custom is reprobated and every contrary privilege is revoked."

Court of Exempt Religious

If a dispute arises between *individual* exempt religious of the same order or congregation, the judge of the first instance is the *provincial*, or the abbot of an autonomous *monastery*, provided the respective constitutions do not ordain otherwise.

Unless the respective constitutions provide some other mode, a civil case pending between *two provinces* must be tried, in the first stage, before the superior general or his delegate; or before the abbot president of monastic congregations if the controversy is between two autonomous monasteries. If a quarrel arises either between individual religious, or between religious corporations of different congregations or orders, or between individual religious of non exempt congregations or lay institutes, or between religious and secular clerics or laymen, the judge in the first instance is the *local Ordinary*. The last-named case, of course, supposes that both litigants are in the same diocese. If they are not in the same diocese, the other rules of competency are to be followed, *viz.*, those mentioned under can. 1564–1568 (location of the litigious object, contract, crime, etc.).

Necessary Officials

At every process or trial there must be present a *notary*, who at the same time acts as secretary. No papers or acts are valid unless written, or at least signed, by him. This latter clause permits the use of a typewriter. The use of a rubber stamp is not admissible for the signature.

The notary must take down in writing the depositions of the witnesses who are present, as well as the answers sent in from other courts, which were asked for by the *litterae rogatoriae.*

The notary must be chosen by the judge, before the trial begins, from among the notaries lawfully engaged in practice—in Rome they have to undergo an examination and are formally admitted to practice—unless the Ordinary has appointed one for that special case.

Each diocese should have its *prosecuting attorney* and its *defensor vinculi.*

The *prosecuting attorney* (*promotor iustitiae*) is appointed for civil cases which, though perhaps of a private nature, may, in the Ordinary's view, affect the welfare of the diocese or the public good (*bonum publicum*). Thus, for instance, a quarrel between two clergymen about a benefice or office may scandalize the whole diocese.

The *promotor iustitiae* also functions in *criminal cases* which, as already stated, almost exclusively concern clergymen.

If these two officials are not summoned to trials which require their presence, all the *acts are null and void,* unless the officials in question were actually present, even though not summoned. Hence *actual presence* is required, not a summons. In civil matters the *promotor iustitiae* may be summoned by the *instructor processus,* but his absence would not invalidate the proceedings, whereas in criminal cases his presence is absolutely required. The presence of the *defensor vinculi* is indispensable in all trials concerning the marriage bond or the validity of an ordination.

However, if the promotor and the defender, though summoned, were not present at one or the other hearing, the validity of the proceedings is not impaired, but these

officials may inspect the minutes afterwards, in order to make such remarks as they may deem necessary or opportune, either orally or in writing.

One and the same person may be promotor and defender, unless a multiplicity of affairs and cases prevents, as may happen in large dioceses, or when cases are tried by several courts, or in different places at the same time.

The offices of promotor and defender may be held for all cases that may arise (*ad universitatem causarum*) or one may be appointed for each individual case (can. 1588). Those elected for all cases do not lose their office during the vacancy of the episcopal see, nor may they be removed by the vicar-capitular; they need, however, the approval of the new prelate. Besides, the bishop may remove them from office for any just cause (can. 1590).

Court of Appeal

Appeal from the court of a suffragan bishop lies to the metropolitan. If a case was tried in the first instance by the metropolitan court, appeal lies to the court of that local Ordinary whom the metropolitan, with the approval of the Holy See, has chosen once for all as court of appeal.

The court of appeal must be established in the same fashion as the court of the first instance; hence the collegiate board with the official and vice-official must be constituted also in courts of appeal, and the same rules proportionately must be observed in the proceedings. If the case was tried *collegialiter* by the first court, it must be tried *collegialiter* also by the court of appeal; if three judges functioned in the lower court, three must act in the court of appeal; if five in the first, also five in the second instance.

Delegated Judges

As to delegated judges it may be well to briefly state what the Code (can. 199–207) rules concerning delegation of jurisdiction in general:

1. As to the *delegation itself:* Ordinary jurisdiction can be delegated wholly or in part, unless otherwise provided in law. Jurisdiction delegated by the Holy See may be subdelegated either habitually or for a specified act, unless the delegation was given for personal reasons or further delegation is expressly prohibited. Jurisdiction delegated by prelates inferior to the Pope can be subdelegated only in case the jurisdiction over all matters has been delegated, and then only for individual cases. Otherwise the power to subdelegate must be expressly mentioned, as is the case, for instance, with some faculties which our bishops and the Vicars Apostolic receive and which directly mention the power of subdelegating.

2. As to the *exercise* of delegated jurisdiction: Judicial jurisdiction—contentions and criminal cases which require the formalities prescribed in the Fourth Book of the Code—either ordinary or delegated, can, as a rule, not be exercised in one's own behalf or outside one's territory. Furthermore, the delegate who exceeds the limits of his mandate, either concerning objects or persons, acts invalidly. If *several* delegates are chosen *in solidum,* the whole jurisdiction resides in each one, and each may therefore decide the case by himself without the coöperation of the other; but if the several delegates are appointed as one body (*collegialiter*), all have to proceed conjointly in order to act validly. This is the case concerning the board of judges of three, respectively five, mentioned in can. 1576.

3. According to can. 209, the Church supplies (*supplet ecclesia*) jurisdiction in the internal as well as external forum when a common error or a positive and probable doubt either of law or of fact arises.

4. A *judge delegated by the Holy See* may avail himself of the assistance of the officials of the court of the diocese in which he is to judge; but, unless his rescript reads otherwise, he may choose or take to himself whomsoever he pleases.

Judges delegated by the *local Ordinaries* are bound to employ the officials of the diocesan court, unless the bishop, for a weighty reason and in an individual case, decides to appoint special and extraordinary officials.

It may here be briefly stated what are the *essentials of a trial.*

Every trial consists of two elementary parts, the persons concerned and the legal process itself.

1) The *persons* are the judge or board of judges, the plaintiff, and the defendant, the assistants, *viz.,* the notary, the counsel for defence, and other assistants, besides, in certain cases, the *defensor vinculi* and the *promotor justitiae.*

2) The *legal process* consists of the bill of complaint, the summons, the means of evidence (proofs, witnesses, oath, etc.), inclusive of grant of dilatory terms and exceptions, and finally, the sentence from which, *exceptis excipiendis,* an appeal may be taken.

The Sentence

When a *board of judges* has to pronounce sentence, the procedure is as follows:

a) The presiding officer determines the *day* and the *hour* when the judges shall meet for deliberation. The

place for the meeting is the *court room,* unless circumstances make it advisable to choose another locality.

b) On the day appointed each judge shall bring with him the *conclusions* he has arrived at in the case, together with a statement of the motives that prompted them.

All this must be done in writing and inserted in the acts of the trial, but kept secret. Each judge must state the *reasons for his opinion* or conclusions *in facto et iure.* The phrase *in facto* means that the conclusions must remain within the writ of complaint, or concern precisely this case and no other; the reasons *de iure* may be applied to the law in general as well as to any specific right on which the plaintiff based his claim; this is also called *in causa et actione.* Hence the sentence must, as the canonists say, conform to the *libellus* and to the law in general.

c) After the conclusions of each judge have been read by the *ponens* or referee, and by the judges according to precedence, a *moderate discussion* shall take place under the supervision of the presiding judge, in order more accurately to determine the dispositive part of the sentence.

d) Each judge is permitted to change his conclusion in the course of this discussion, because the discussion may convince him that he was in error, either *in facto* or *in iure.*

e) If the judges are unwilling or unable to arrive at a definite sentence, another discussion may be held, but not later than eight days after the first.

If but *one* judge is sitting on a case, he must work out the sentence for himself; but in a board the president may entrust one of the judges with the office of *ponens,* to draft the sentence in writing (can. 1584).

1. The *sentence* must contain an invocation of the Divinity.

2. The *following names* must be set down in order: the names of the judge or tribunal, *i. e.*, the board of judges; of the plaintiff, defendant, proctor, together with their domiciles; of the fiscal promotor and the defender, provided they took part in the trial.

3. It must contain a brief *statement of the case* together with the arguments or conclusions of the parties.

4. Then follows the *dispositive part* of the sentence, preceded by a statement of the motives which prompted it.

5. At the bottom or end of all these statements follow the *day* and the *place* when and where the sentence was drafted, and the signatures of the judge or judges and the notary.

All these rules, says can. 1875, apply chiefly to *definitive sentences,* but they should be observed also with regard to *interlocutory* sentences, if the nature of the incidental question calls for or permits it.

The sentence thus drafted should be *published as soon as possible.* How soon, is not expressly stated; but the phrase generally means after a short interval of not more than eight days.

The *manner* in which the sentence may be published is threefold:

a) By summoning the parties to hear the sentence solemnly pronounced by the judge sitting in court;

b) By notifying the parties that the sentence is ready at the chancery of the court and leave is granted to read it and have a copy made;

c) By sending a copy of the sentence to the parties through the public carrier, where this is customary.

The Code forbids *appeal* in nine cases, two of which affect the person of the judge, one the form of the sentence, and the rest its matter. Appeal is inadmissible, therefore,

1.° *From a sentence of the Supreme Pontiff or the Signatura Apostolica.* The Roman Pontiff is the highest judge of the universal Church, and therefore no appeal lies from his sentence. Appeal from the *Signatura Apostolica* is inadmissible because of its office and power. An appeal in the proper sense is inadmissible also from a sentence of any of the Roman Congregations, which, however, decide not judiciary but disciplinary matters, and hence are not especially mentioned.

2.° From the sentence of a judge who took cognizance of the case in virtue of *papal delegation* with the clause, *"appellatione remotâ,"* which forbids an appeal.

In these two cases only one remedy is open, namely, *restitutio in integrum* (see can. 1905–1907).

Here may be mentioned the penalty incurred by those who appeal from a sentence of the Pope to a general council: it is excommunication *speciali modo* reserved to the Holy See.

3.° *From a sentence which is null and void,* as may be seen in can. 1892 f., because an invalid sentence is no sentence at all, and an appeal always presupposes a valid sentence.

4.° From a *sentence which has passed into a res iudicata,* as seen in can. 1902 f., unless the sentence has been executed with excessive rigor.

5.° From a *definitive sentence* which has been pronounced in virtue of a *decisive oath,* because of the sacredness of the oath and on account of a species of contract.

6.° From a *decree or interlocutory sentence of the judge,* which is not definitive, unless coupled with an ap-

peal from a definitive sentence, when an appeal is permitted by reason of the connection. Otherwise not, *ne procedatur in infinitum.*

7.° From a sentence pronounced in a matter for which the law provides a speedy settlement, as against non-resident clerics, or in case of appointment to office.

8.° From a *sentence against a contumacious person* who has not purged himself of his contumacy, according to can. 1842 ff. (*"quia contumax non appellat."*)

9.° From a sentence pronounced against one who has given a *written declaration that he will not appeal,* because this declaration is equal to a contract.

The appeal must be prosecuted *before the judge to whom* it was directed, *within a month* from the date when it was lodged.

But the judge from whom the appeal was made, may fix a longer term for the prosecution of the case appealed. The judge *ad quem* is not determined here, but the rule is that he should be the one immediately superior. Hence from the diocesan court appeal should be taken to the metropolitan court. However, this latter may lawfully be omitted if an appeal is addressed to Rome. From the vicar-general to the bishop no appeal is admissible.

In order to prosecute the appeal it is *required and suffices* that the higher court be implored to change the obnoxious sentence. A copy of the first sentence and the writ of appeal presented to the inferior court must be sent to the higher court. In case the party cannot obtain a copy of the sentence from the judge *a quo,* the time "does not run," *i. e.,* the lapse of one month must not be reckoned as fatal. But the obstacle must be reported to the court of appeal, which shall send peremptory notice to the lower court, admonishing it of its duty. If the appellant should die, or change his personal status,

or go out of office (see can. 1733) within the term (of ten days) granted for putting in the appeal, but before the appeal was actually made, the sentence must be notified to those concerned, and the term for appeal runs from the day of the notice. If the case, as stated above, occurs after the appeal has already been made, the appeal must be made known to the parties concerned, and the term (of ten days) runs from the day of the notice given (and, we suppose, received).

The proper *effect of an appeal* may be suspensive or devolutive. The *suspensive* effect of an appeal consists in stopping the execution of the sentence or suspending its effect. It is, therefore, not a quashing of the sentence, but merely a putting off. Hence whatever is attempted against or during a suspensive appeal, is revocable and considered as *attentatum,* wherefore the axiom must be applied: *"Lite pendente nihil innovetur."* The regular or usual *effect* of each and every appeal is *suspensive,* unless the law states the contrary, and with due regard to can. 1917, § 2.

The *devolutive* effect of an appeal consists in this, that the superior judge draws the whole case before his court and decides whether or not the appeal is to be admitted, but the sentence takes effect or is carried out even though the merit of the issue is still pending. An example may be taken from the division of parishes.

A sentence is *incurably null* in the following cases:

a) When it has been rendered by an *incompetent judge,* or, if there was a board of judges, by a number less than prescribed by law. And here it must be borne in mind and emphatically stated that according to can. 1576 *three judges* are required for ordination and matrimonial cases, and for some criminal cases of removal or excommunication; whilst *five judges* must pronounce sentence

in important criminal cases of deposition and degradation. The consequences involved are too serious to overlook this ruling; for a sentence in matrimonial cases may be upset because of the lack of the number of judges required by law.

b) When the sentence has been pronounced on parties one of whom was not entitled to bring suit in an ecclesiastical court (*"non habet personam standi in iudicio"*; see can. 1646–1654).

c) When one has prosecuted a case in another's name without being commissioned to do so (*sine legitimo mandato*). Hence a proctor, counsel, or administrator (cfr. can. 1520) cannot prosecute validly without a special commission.

The Code determines very clearly when a *res* becomes *iudicata,* namely:

1.° After *two uniform sentences* have been pronounced on the same case, *i. e.,* in the first and second instance, or in the second and third instance.

2.° After a *sentence which has not been appealed* within the time granted by law. The same holds good when a sentence, though appealed to the judge who pronounced it, was not prosecuted at the court of appeals.

3.° After *one sentence,* in cases in which no appeal is admitted, according to can. 1880. Certain cases never pass into the stage of adjudged matter because they affect the public welfare, which can. 1903 connects with the *status personarum,* or the personal state of the litigants, which certainly affects the clerical, religious, and married state. Therefore sentences passed on the validity of ordination, of religious profession, and of marriage do not become *res iudicatae,* even though all the requisites of can. 1902 are verified.

The execution should be carried out, either personally

or through a delegate, by the *local Ordinary* of the diocese in which the trial was prosecuted in the first instance. If he refuses or neglects to put the sentence into effect, the interested party may demand execution from the court of appeal, which may execute the sentence *ex officio* in case of refusal or neglect of the lower court.

Criminal Trials

1. The *crimes* subject to criminal procedure must be *public*. A crime is defined in can. 2195 as an external and a morally imputable violation of the law, to which is attached a canonical sanction or penalty, at least undetermined. The crime is *public* if it is already divulged or has been committed under circumstances which make it liable to be divulged (can. 2197, n. 1).

2. *Exempted from criminal procedure* are the cases for which other penalties are sanctioned in law. These are:

a) Procedure against non-resident clergymen; can. 2168–2175.

b) Procedure against *clerici concubinarii;* can. 2176–2181.

c) Procedure against pastors who neglect their pastoral duties; can. 2182–2185.

d) The procedure called *ex informata conscientia;* can. 2186–2194.

These cases, then, are not to be prosecuted in criminal form, but in the manner established by the respective canons.

3. Against crimes which may be prosecuted either in the civil or in the ecclesiastical court (*mixti fori*), Ordinaries should, as a rule, not proceed if the accused is a layman and the civil authority is already prosecuting him, thus safeguarding the public welfare.

4. Penances and penal remedies (can. 2306–2313), excommunication, suspension, interdict, may be inflicted by *way of a precept,* without a trial, whenever the delinquency is fully proved.

Criminal Procedure

Every criminal procedure involves *three essential elements*—the accusation, the trial, and the sentence. Without any one of these the whole procedure would be null and void.

The first and most necessary step is the *accusation,* for "where there is no accuser, there is no accused." But there is a notable distinction between judicial accusation and simple accusation, which is more properly styled denunciation. The judicial accusation may be most properly called an *indictment,* which ensures legal action or procedure, and is (can. 1934) reserved to the *fiscal promotor,* to the exclusion of all other persons, even the local Ordinary. Hence the judicial accusation can be lodged only by an official who is the *promotor iustitiae.*

Different from an indictment is *simple denunciation,* or, as we may call it for brevity's sake, the *warrant.* Canon 1935 defines the right and obligation of denunciation as follows:

1. Every Catholic has the right to denounce the crime of another, either (a) to demand satisfaction or indemnity, or (b) for the sake of justice, *i. e.,* that scandal may be repaired or evil counteracted. In the first case the motive is *personal interest,* and the case should therefore be classified among torts (such as libel and damage suits). In the second case the intention of the accuser is the restoration of justice, which suffers through any crime.

2. The *obligation* of denouncing another becomes ur-

gent when (a) one is obliged to do so by law, or (b) by a special precept, or (c) in virtue of the natural law, which dictates that every danger to faith and religion and every menace of public evil should be averted.

Ad a). The *common law* makes denunciation imperative:

1.° Against *confessarii sollicitantes ad turpia* (can. 904; 2368, n. 2);

2.° When one knows of impediments to the reception of holy orders (can. 999);

3.° Or of the existence of matrimonial impediments (can. 1027);

4.° Or of the circulation of dangerous books (can. 1397);

5.° Or of clergymen and religious being members of Masonic sects (can. 2336).

Ad b). By *special precept* Ordinaries and religious superiors may command their subjects to denounce certain crimes or persons suspected of wrong-doing; this, however, greatly depends on the constitution of each respective congregation or order.

Ad c). In *virtue of the natural law* theologians and canonists, though with some shades of variance, hold denunciation (judicial, not evangelical) to be obligatory on an inquest.

Inquest

1. A special inquest is required in cases (a) where the crime is neither notorious nor entirely certain, *viz.*, uncertain as to the fact or its imputability to the person denounced, but known only (b) through rumor and hearsay, or (c) by semi-official information, *viz.*, denunciation, complaint of damage, general inquiry made

by the Ordinary, or in any other strictly extra-judicial way.

2. The *time* for the inquest to be held is *before* one is summoned or judicially cited.

3. The purpose of the inquest is to ascertain whether and on what ground the crime may be imputed.

4. With *regard to the penalty,* § 2 of can. 1939 states that an inquest must be held whenever a vindictive penalty or censure is to be inflicted—*ab homine*—or only a declaration of sentence is required, *viz.,* a declaration that the penalty or censure has been incurred. Comparing this text with can. 1935, § 4, it might seem that there is a contradiction, but this is not the case. For canon 1933 supposes the crime to be certain. Besides, this inquest, as stated, has already given a legal turn to the procedure, and therefore legal means are required for inflicting the penalty.

The next question is, *Who may act as inquisitor?* Answer: The local Ordinary, *i. e.,* the bishop or his vicar-general, may personally conduct the inquest. The law in this case is permissive rather than preceptive, but it adds that as a rule the business of holding the inquest should be committed to one of the *synodal judges.* But the Ordinary may, for special reasons, *choose another,* who, according to the instructions of the Roman Congregations, should be a learned, righteous, and capable priest, or at least a cleric.

The inquisitor is a *delegate,* and hence does not remain in office permanently, but is chosen for each single case (*ad hoc*) and needs special delegation for each. The conclusion: "N. has been delegated for this case, hence he may act also in the next case," would, therefore, be entirely wrong and would nullify the whole procedure.

The inquisitor is *under the same obligations* as the

judge in ordinary, and must therefore give oath that he will keep the secret, conscientiously discharge his duties, and accept no donations or bribes.

The inquisitor *cannot validly act as judge* in the same case. The consequence is that a synodal judge chosen as inquisitor cannot *pro hac vice* act also as judge.

It is hardly necessary to add that the delegation must be given expressly, since the office of inquisitor is not attached to any particular judiciary office, either that of synodal judge, or of counsel, or of auditor, and that the delegate must adhere strictly to his commission or mandate, the limits of which he may not exceed, if any are drawn in the writ.

The inquisitor should not proceed with the inquest until the Ordinary has prudently judged or decided that the evidence so far obtained is sufficient to institute a formal inquest. Hence it lies *with the Ordinary to give orders for the inquest.* What if the Ordinary doubts the sufficiency of the materials thus far collected? He may order other secret information to be gathered and call in witnesses who knew the incriminated person and the accusers, and make them respond under oath to the questions put to them. These depositions, of course, must be diligently preserved, as they may be of service in the trial.

After the inquisitor has been appointed and informed that the evidence at hand is sufficient, the *inquest may begin.* It must always be conducted *secretly* and *cautiously,* so that no rumor of the crime is allowed to spread abroad, and the good name of no one, delinquent, accomplice, or any other person involved, is jeopardized (can. 1944). This, of course, implies *strict secrecy,* not only on the part of the inquisitor himself, as stated in can. 1941, § 2, but also on the part of all those whose

assistance he may require for conducting the inquest.

The inquisitor may call in persons who are acquainted with the accused, or with the accusers, or with the case in general. The number of the persons that may be summoned is not determined. Those who appear may and must be put under oath to speak the truth and, as stated, to keep the whole proceeding secret. The *procedure* for examining these persons is much the same as that prescribed for the examination of witnesses (can. 1770–1781).

Our text says, *"quantum fieri potest et natura inquisitionis patitur."* Hence it would hardly be advisable to confront the witnesses.

The place of the judge is taken by the inquisitor.

No solemn or public summons is required.

If the inquisitor deems it prudent to repair to the domicile of the witness, the law does not forbid him.

In cases of *sollicitatio,* women may be heard in the sacristy or some other unsuspected place.

If the inquisitor should meet with difficulties, says can. 1945, he may *consult with the fiscal promotor* and communicate to him what has been done. But all this must be done before the acts of inquisition are formally closed. The *closing of the inquisitorial acts is required* in order to mark a stage in the procedure. It is, however, left to the inquisitor to decide when the acts of judicial inquiry are completed, or when the *conclusio in causa* (can. 1860) is brought about; although no special decree to that effect need be issued.

After the acts of inquisition are closed, or the finding is complete in the judgment of the inquisitor, because the evidence is exhausted, he shall formulate his opinion, which is generally styled *votum,* but is here called *suffragium.* This *votum,* we suppose, should be put into

writing, although the text does not expressly say so. Together with this statement the inquisitor shall submit his findings to the Ordinary, who has to read the acts carefully in order to come to a conclusion in the three possible hypotheses with which he may now be confronted.

Conclusion

The Ordinary (either the bishop or his vicar-general) may entrust the *officialis* (see can. 1573) with the inspection of the acts, but it requires a *special mandate* for each and every case. The Ordinary, then, or the *officialis,* shall issue a *decree* adapted to the conclusion resulting from the inspection of the acts.

1.° If the denunciation appears *groundless,* the decree must so declare and be incorporated with the acts, which are then to be placed in the secret diocesan archives.

2.° If the *evidence* is *insufficient* to justify criminal prosecution, the acts must be deposited in the secret archives of the diocese and the denounced person watched as to his conduct, asked concerning his behavior, and, if necessary, be served an admonition, according to can. 2307.

3.° If the evidence is *conclusive,* or at least *probable and sufficient* for criminal prosecution, the delinquent must be summoned to appear in court and proceeded against according to the rules that follow. The sufficiency of the evidence must be judged according to can. 1789–1791 and can. 1812–1818; confession according to can. 1750–1753.

Since the summons can be issued upon certain, or at least probable and sufficient evidence, it is plain that by *confession* here is meant a *judicial confession, i. e.,* one made in court. The Ordinary, therefore, should ask

the person summoned: "You are accused of such and such a crime; do you plead guilty?"

After the confession or admission is made, the Ordinary may administer *judicial correction,* which is not identical with judicial punishment.

But there are *exceptions* to the employment of this expedient, and these are stated in can. 1948, which *excludes judicial correction, viz.:*

1. In all crimes, even though confessed, which are punishable by *excommunication* most especially or especially reserved to the Holy See, or which are punishable in law by privation of benefice, infamy, deposition or degradation;

2. In all crimes which require only a *declaratory sentence* for incurring a vindictive penalty or censure, because *de facto* already incurred;

3. Whenever the Ordinary deems a *judicial correction insufficient* to repair the scandal given and to restore justice. This is left to the judgment of the Ordinary.

Correction may also be employed in *criminal damage suits,* in which the Ordinary may, if the parties consent, settle the question of damages according to the rules of equity. If, however, the difficulty of an equitable settlement proves too great, the Ordinary may refer the settlement to the civil court and in the meanwhile, by judicial correction, repair the scandal and endeavor to correct the delinquent (can. 1951).

The Bishop or his *officialis,* provided the latter has obtained a special mandate to this effect, shall command that the *inquisitorial acts be handed to the fiscal promotor in the following cases:*

1. If judicial correction was considered insufficient to repair the scandal or to restore justice (can. 1948);

2. If the defendent denies the crimes imputed to him,

in which case the judicial correction could not be employed;

3. If judicial correction proved ineffective, according to can. 1953.

When any one of these three cases is verified, the fiscal promotor must immediately draw up a bill of complaint or accusation and present it to the judge.

After the bill of complaint has been presented, the *next step is properly and legally to summon the accused* or defendant.

If the *crime is of a very serious nature,* and the Ordinary is of the opinion that the faithful would be scandalized if the incriminated cleric would exercise the sacred ministry or perform spiritual functions or pious exercises, or publicly receive holy Communion, he may, after having heard the promotor's advice, forbid the exercise of the sacred ministry or of spiritual ecclesiastical functions, and the public reception of Communion. This is a kind of suspension, but without penal character, and therefore irregularity would not follow.

Matrimonial Trials

All matrimonial cases between baptized persons belong by proper and exclusive right to the ecclesiastical judge.

Cases which concern merely the civil effects of marriage, if these are the principal cause at issue, appertain to the civil court; but if the civil effects are only incidental and accessory, they may be taken cognizance of and settled by the ecclesiastical judge in virtue of his inherent power.

1. The competent Roman Court is the *S. Congregation of the Sacraments,* whenever there is question of dispensing from a ratified but unconsummated marriage.

This court is so exclusively competent that, as can. 1963 rules, no inferior judge, hence no local Ordinary, can institute a canonical trial in such cases unless the Holy See has granted faculties for that purpose. Local Ordinaries may receive this faculty from the Holy See (S. C. Sacr.) either habitually or for single cases.

However, the local Ordinaries may indirectly be concerned and empowered to institute a trial, which may lead to a sentence of a dispensation from a ratified marriage. This happens when a case of impotency, which the Ordinary is entitled to take cognizance of in virtue of his own authority, is brought before him. If the physicians and nurses and other witnesses required in the case are unable to prove the existence of impotency but merely the fact that the marriage had not been consummated, the minutes must be sent to the S. Congregation, which may make use of the same to pass judgment concerning the *matrimonium ratum non consummatum.* The S. Congregation may, *iure proprio, i. e.,* without special commission from the Pope, transmit the case to the *S. Romana Rota,* which shall investigate the fact of non-consummation.

2. The second Congregation mentioned in can. 1962 is the *Holy Office.* But here only the Pauline Privilege is mentioned, whilst disparity of worship and mixed religion are omitted. The reason for this omission is that only the most exclusive matters are referred to in our canon. Besides, as noted in can. 1121, § 2, there is no question of a real dispensation in the matter of the privilege of faith, but only of a declaration, and such a one no Ordinary is allowed to give. Hence if there is a doubt whether the interpellation must be made, recourse should be had to the Holy Office.

Attention must be called to an Instruction issued May 7, 1923, by the S. C. of the Sacraments, which minutely

describes how Ordinaries, *iudices instructores,* must proceed in case of a supposed non-consummated marriage. The importance of this instruction is apparent from the preliminary statement that, if a marriage was really consummated, although apparent proofs indicate non-consummation, the dispensation of the Roman Pontiff would be null and void, because not based on fact—*"utpote suo fundamento destituta, nullius est valoris."*

The instruction consists of 15 chapters and 34 *formulae* and will be found in the *Acta Apostolicae Sedis,* Vol. XV, No. 8, Aug. 1, 1923. It fills one entire issue of the official bulletin.

The Ordinary's Competency

In other matrimonial cases the competent judge is the judge of the place (or diocese) where the marriage was celebrated, or where the defendant has his domicile or quasi-domicile, or, if one of the parties is a non-Catholic, where the Catholic party has his or her domicile or quasi-domicile.

By the term *judge* is understood the Ordinary of the diocese, because he is the *iudex ordinarius* of the place. Abbots *nullius* are not excluded from acting as judges in matrimonial matters. The *vicar-general* as well as the *vicar-capitular* or administrator are also entitled to conduct such a trial. But inferior prelates, no matter how many titles and insignia they may have, do not fall under the category of Ordinaries and, therefore, have no right to act in such cases.

The question who is the Ordinary, is settled by the Code when it states the two reasons which decide competency. The first is the *ratio contractus* or the place where the marriage was celebrated, because marriage is a species of

contract. This reason may be invoked at any time, for the fact of having contracted marriage in a certain place remains. The second reason is the *domicile* of the defendant or of the *pars conventa,* according to the well-known axiom: *"Actor sequitur forum rei."* Equal to the domicile in our case is the *quasi-domicile,* and no preference may be claimed.

As to *mixed marriages*—and this holds good of disparity of worship as well as of mixed marriages properly so-called—the Code states that the domicile or quasi-domicile of the *Catholic party* decides who is the competent judge. Therefore the Ordinary in whose diocese the Catholic party has a domicile, is entitled to judge concerning the free status of a heretical party who has been divorced by a sentence of the civil court. But if the non-Catholic party has been received into the Church, the domicile of the husband determines the competency of the Ordinary.

With the sole exception of the *matrimonium ratum et non consummatum,* which requires only one judge to conduct the investigation, a *collegiate tribunal of three judges* must be set up *for every matrimonial case or trial,* and no privilege or custom may be claimed to offset this law. Henceforth every diocesan court should have a board of three judges for matrimonial trials.

The Defensor Vinculi

Each diocese must have a *defensor vinculi,* who should be summoned in cases which concern either the nullity of a marriage or the gathering of proofs for non-consummation and dispensation from a ratified but not unsummated marriage.

1. It is the *duty* of the *defensor vinculi* to be present at the examination of the parties, witnesses, and experts; to

present to the judges in a closed and sealed envelope the questions to be opened by the judges in the act of examination, but to be proposed to the parties and witnesses; and to suggest to the judges new questions which may be suggested by the cross-examination.

2. He has to weigh the arguments proposed by the parties, and if necessary, to contradict them, and to review the papers offered.

3. He must set down in writing and point out observations against the nullity of the marriage and in favor of its validity or consummation, and in general make use of all lawful means which he deems conducive for the defense of the marriage bond.

1. He has the right to inspect, at any stage of the proceedings, the minutes of the trial, even though they have not yet been published, and to demand prorogation, which is to be granted according to the discretion of the judge, in order to complete his records.

2. He is entitled to be informed of all the proofs and allegations made, in order to be able to refute them.

3. He may demand that new witnesses be introduced, or that such as have already been on the witness-stand be re-examined, even though the minutes of the trial have been completed and published; and he may also make new observations.

4. Finally he may demand that other acts, suggested by himself, be drawn up, unless the tribunal by a unanimous vote objects to this demand.

The Plaintiff

The board of judges cannot take cognizance of, nor decide, any matrimonial case, unless a regular accusation or a legal petition has preceded.

1. Either one or both of the contracting parties may present the bill to the episcopal court. The parties alone are admitted to attack their marriage on the ground of defective consent, whether this defect be caused by violence and fear, or error, or lack of will, or unfulfilled conditions. If one party alone is conscious of defective consent, that party alone can lawfully present the petition. Concerning impotency, too, the only competent plaintiffs are the parties themselves, because they alone can know the fact and they alone are interested in the matter. The Code, however, does not limit the parties' right to these cases. Hence any impediment which, without their own fault, was in the way of their lawful union may be used as a reason for impugning it.

2. Besides the parties themselves, the *promotor iustitiae* or prosecuting attorney of the diocesan court may attack a marriage because of impediments which are by nature *public*.

3. All others, even blood relations, *have no right* to attack a marriage, but *may denounce* the nullity of a marriage to the Ordinary or promoter of justice.

Proofs

Blood relations and *affines,* although otherwise excluded, may be admitted as witnesses in matrimonial cases of their kin, because these, as a Palea of the Decree says, know their genealogy or pedigree better than strangers.

In cases of impotency or non-consummation, unless the facts are ascertained from other sources, each of the parties must produce witnesses (called "of the seventh hand," *septimae manus*), who are related to the parties by blood or affinity, or neighbors of good repute, or otherwise well-informed persons, who will testify under oath to the

probity of the parties and their truthfulness concerning the controverted matter. To these the judge may *ex officio* add other witnesses. This testimony of the *septima manus* is a proof of credibility which adds weight to the deposition of the consorts, but it has not the force of full proof unless it is supported by other circumstances or arguments.

Cases of impotency and non-consummation require bodily inspection of both or one of the parties, which is to be performed by experts, unless circumstances—like those just mentioned—render it evidently useless. The experts must be chosen by the judges after having taken counsel with the *defensor vinculi.* Besides, the following canons must be observed.

After the report has been received, the experts, the midwives, and the matron are to be questioned separately according to the points previously drawn up by the *defensor vinculi,* whom they must answer under oath.

The verdict of experts is required also in cases of defective consent caused by insanity. They must, if the case admits, examine the patient as well as those acts of his which cause suspicion, according to the rules of their art (psychiatry). Besides, experts who have attended the patient before his illness should be heard as witnesses.

1. The defender is entitled to be heard last, when allegations are made, petitions filed, or answers given, and he may exercise this right either in writing or by word of mouth.

2. Hence the tribunal shall not proceed to render a verdict, unless the defender has formally declared, upon request, that he has nothing more to bring forward or to inquire into.

3. If, however, the defender has brought forward

nothing to the contrary before the day set for the trial, it is presumed that he has nothing more to say.

If the case concerns a dispensation from a *matrimonium ratum non consummatum,* the judge who drafted the case may neither publish the acts nor pronounce sentence as to non-consummation or the reasons for the dispensation, but must send all the acts together with the written view of the bishop and of the defender to the Holy See.

Appeals

The *defensor vinculi* must, within the time granted by law, appeal to a higher tribunal if the first sentence was in favor of the nullity of the marriage. If for any reason he neglects to do his duty, he may be compelled to do it by the judge.

If the second sentence confirms the first given in favor of nullity, and the defender of the court of appeals (which is a different one from that of the first instance) does not feel himself obliged in conscience to appeal, the parties are free to marry again after the expiration of ten days from the date when the second sentence became known to them. Pending the appeal, *i.e.,* during the time between the first and second sentence, the party in whose favor the nullity was declared in the first instance, is not allowed to remarry; and if he or she should have attempted a marriage before the second sentence, they must be separated, or else are to be treated as guilty of polygamy.

After the second sentence in favor of nullity, the Ordinary should see to it that the annulment of the marriage is duly recorded in the baptismal and matrimonial registers at the place where the marriage was contracted.

Since no sentence in matrimonial trials ever becomes a *res iudicata,* a case may be reopened at any time if new proofs are offered; but these proofs must be weighty and supported by documents.

Cases Excepted from the Preceding Rules

1. The *impediments* which may be brought forward in order to have a marriage declared null and void are: disparity of worship, sacred orders, solemn religious profession, the bond of a previous marriage, consanguinity, affinity, and spiritual relationship,—seven in all. That the others are not included is due partly to the nature of these impediments, partly to the difficulty of complying with the required conditions.

2. The *conditions* which govern the application of this canon are: (a) that the existence of the impediment be ascertained by a *reliable and authentic document,* which cannot be rejected or disregarded; (b) that it be equally certain that *no dispensation* had been granted from the impediment.

3. The Code adds *that in these cases the solemnities thus far mentioned* (in the preceding canons, which prescribe the regular trial) *may be omitted,* and the Ordinary, upon having summoned the parties, may declare the marriage null and void, provided the *defensor vinculi* is satisfied.

If the defender prudently believes that the impediments mentioned in the preceding canon did not exist, or were probably dispensed from, he is obliged to appeal the case to the judge of the second instance, to whom all the acts must be transmitted with the understanding that the case belongs to the excepted class.

The Papal Commission for the Authentic Interpretation of the Code has decided the following cases:

1. If two Catholic parties have contracted marriage before the civil magistrate only, without observing the *"Tametsi"* or the *"Ne temere,"* in places where these laws are binding, and wish to contract marriage anew *in facie Ecclesiae,* or to have their civilly contracted marriage revalidated, the local Ordinary (or the pastor after having consulted the local Ordinary) may declare the first marriage null and void without a formal trial and without the intervention of the *defensor vinculi,* after having made the investigation prescribed in can. 1019, *i. e.,* after having ascertained the free status of the couple, *viz.:* that no other impediment except the former invalid civil marriage is in the way.

2. The same rule is to be applied in cases of *mixed marriage* contracted invalidly under the same condition, provided the Catholic party wishes to contract a new marriage with a Catholic party.

3. The same rule applies in cases where apostates from the Catholic faith have contracted an invalid civil marriage for the same reason, and, now repentant, wish to contract a new marriage with a Catholic party *in facie Ecclesiae.*

But in each and every one of these cases a *civil divorce* must have been obtained. (*A. Ap. S.,* Vol. XI, 479, Oct. 16, 1919).

PROCEDURE IN ORDINATION CASES

If the obligations arising from sacred ordination or the validity of the ordination itself, are in dispute, a petition must be filed with the *S. C. of Sacraments.* If the validity is disputed because of a substantial defect in

the holy rites, the S. C. of the *Holy Office* is competent to decide whether the case is to be tried in a judiciary or disciplinary manner.

If the *judiciary form* is chosen, the S. Congregation shall refer the case to the court of the diocese to which the clergyman belonged at the time of his ordination, or, if the case turns upon a substantial defect of the holy rites of ordination, to the court of the diocese in which he was ordained. As to the various instances of appeal, canons 1594–1601 must be observed.

If the case is to be settled in the *disciplinary way*, the S. Congregation itself shall render the decision, after having received the necessary documents from the competent diocesan court.

Diocesan courts are requested to note that the Apostolic See always expects either a verdict or at least documents relating to the case. A *verdict* or sentence is required if the Roman tribunal is to take up the case. But no verdict is to be given before the S. Congregation has notified the diocesan court that the case should be settled *ordine iudiciario*. This must be expressly stated in the document sent from Rome.

The clergyman himself, as well as the Ordinary to whom he is subject, or in whose diocese he was ordained, may attack the validity of an ordination.

No one but the clergyman who thinks that he has not contracted the obligations arising from sacred ordination, is entitled to ask for exemption from these obligations.

A clergyman who brings suit for the purpose of being freed from the obligations arising from sacred ordination, even though he does not attack its validity, is provisionally suspended from the exercise of orders. This suspension (or rather prohibition) is not penal, and consequently a

cleric affected by it would not become irregular if he were illicitly to exercise the functions proper to his order.

Two identic sentences are required to free a clergyman from the obligations attached to sacred orders. Concerning *appeals,* canons 1986–1989 must be observed.

SECTION II

THE BEATIFICATION PROCESS

This whole process, as far as the final issue is concerned, is exclusively reserved to the Apostolic See. However, a preliminary procedure may be instituted by the local Ordinary, but not by the vicar-general without a special mandate.

1. *Introduction of the Cause*

The petition for introducing a cause of beatification must be directed to the Apostolic See. But before it is admitted, the truth must be juridically established concerning the purity of doctrine of the deceased Servant of God, the fame of his sanctity, the virtues and miracles he wrought, the fact of his martyrdom, and the absence of any peremptory obstacle; finally, concerning the fact that no public worship has been paid to him. Hence the *postulator* must petition the Ordinary:

1. To see to it that the *writings* of the Servant of God be requisitioned, *i.e.*, seized and examined;

2. To arrange a formal inquiry (*processus informativus*) into his fame of sanctity, his virtues in general, or his martyrdom, the cause of his martyrdom, and his miracles;

3. To institute an inquiry as to the *non-cultus.*

The competent Ordinary in this matter is he in whose diocese the Servant of God died, or in whose diocese the miracles have happened. If the Ordinary himself is related to the Servant of God, he shall delegate another to conduct the trial.

If an inquiry was instituted within the past thirty years into the fame of sanctity or martyrdom of the Servant of God, but was interrupted before the case was introduced at Rome, the Ordinary or his successor must inquire into the continuation of the fame.

The *judge* is the Ordinary or a priest delegated by him. If a delegate conducts the trial, two other judges, taken from the college of synodal judges, must be chosen by the Ordinary.

All this must be done by a *formal decree.*

The *sessions* for taking the oath and examining the witnesses should be held in the daytime and, if possible, in a sacred place.

The *acts* must be closed and sealed after every session and opened only at the next session; if at any time the seal was broken, the judge must report the matter to the S. Congregation.

2. *Inquiry into the Writings of the Servant of God*

1. The term *"writings"* comprises all published and unpublished works, sermons, letters, diaries, autobiographies, and manuscripts of every kind left by the Servant of God.

2. The *faithful* must be publicly exhorted to deliver up all his writings which they may have in their possession. If a religious is concerned, this publication must be made in every religious house, and the superiors are obliged to take care that it is properly done.

The *promotor fidei* shall see to it that the publication is also made in other places where writings may be found.

3. The Ordinary, urged by the *promotor fidei,* shall *officially search* for all such writings. If writings of the Servant of God are likely to be found in *another diocese,* he shall ask the Ordinary of that diocese to search for them according to law (especially can. 2043), and forward anything he may find.

4. Those who wish to *retain autographs* of the Servant of God must allow the notary to take an authentic copy thereof, to be sent to the S. Congregation. Writings found in *libraries or archives,* whence they cannot be withdrawn, should be faithfully copied or photographed, and authenticated by the notary; if no copy can be obtained, the matter must be referred to the S. Congregation.

5. The *notary* must carefully describe the *number and quality* of the writings, and the acts must be *signed* by the Ordinary or his delegate, and the *promotor fidei,* and *sealed* with the Ordinary's seal.

6. The *postulator* must promise under oath that he will make a careful requisition. If the Servant of God was a *religious* of a female institute, the Mother General must make the same promise, under oath, and testify that all the writings of the Servant of God have been delivered up by her and her subjects.

7. In case of a *martyr,* the requisition may be made after the commission has been appointed by the Sacred Congregation.

3. *The Information Process*

1. The *processus informativus* must be instituted by the *Ordinary.* If it was not begun until thirty years after the death of the Servant of God, no further procedure is

allowed until proof is furnished that the delay was not due to fraud, deceit, or culpable negligence.

2. The *witnesses* to be examined (can. 2019 f.) concerning the fame of sanctity, martyrdom, or miracles, are not required to testify specifically, but general testimony as to the growth and existence of the rumor among honest and serious persons is sufficient.

The witnesses are to be queried by the judge as to their knowledge of the life, virtues, miracles, and martyrdom of the deceased, how they obtained their knowledge, and whether it is of the nature of public rumor. Then they must answer the questions put by the promoter of faith.

3. The acts of the inquiry may not be closed before all the letters and papers of the faithful and the friends and acquaintances of the deceased (see can. 2023–2025) have been inspected by the *promotor fidei.* After all the evidence has been gathered, the tribunal shall, upon having heard the *promotor fidei,* give notice to the postulator to bring forward whatever he has, within a fixed term.

4. The *judge,* then, if the *promotor fidei* is satisfied, shall command the notary to publish the acts of the inquiry, which shall be copied by a clerk designated by the tribunal. The copy shall be in handwriting (typewriting forbidden). It is to be collated with the original in the presence of one of the judges and of the *promotor fidei,* and then signed by the notary, the judge, and the promotor, and sealed.

After the collation, the *original acts* shall be closed and sealed, and placed in the diocesan archives, never to be opened without the permission of the Apostolic See. The *abstract* is closed and sealed with the seal of the Ordinary. The notary shall make two copies of it, one of which is to be forwarded to Rome, the other to be kept in the diocesan archives.

4. *Inquiry into the Non-Cultus*

Besides the two witnesses produced by the postulator, the tribunal shall introduce two more, who shall testify whether or not the Servant of God ever received a *public worship*. Besides, the tribunal shall carefully inspect his grave, the place (or house) where he lived and died, and other localities where indications of a cult may be suspected.

If the inquiry brings to light indications which show that public worship was paid, the *promotor fidei* must insist upon further investigation and the tribunal *must give sentence* as to the existence of such worship.

5. *Transmission of the Acts to Rome*

1. As soon as the Ordinary has obtained the *writings,* he must *forward them to Rome,* together with a judicial report as to the care with which the requisition was conducted. If other writings are found while the trial is going on in Rome, they must be immediately forwarded thither and examined there before any further progress can be made.

2. An *abstract of the informative process* must be delivered by the Ordinary to the postulator, who shall send it to the S. Congregation. At the same time he (the postulator) shall forward *letters from the judges* addressed to the S. Congregation, and *letters of the* (*diocesan*) *promotor fidei* to the promotor general of faith, in order that the S. Congregation may be informed of the trustworthiness of the witnesses and the legality of the acts. For this purpose the Ordinary shall also send a description or

copy of the seal with which the abstract was sealed.

3. Finally the Ordinary shall have the postulator to send the complete result of the inquiry as to the fact of *non-cultus* to the S. Congregation.

6. *Per Viam Cultus*

The Ordinary competent to conduct the inquiry is he in whose diocese the cult existed or the documents were found, or who has the right of pre-occupation if several Ordinaries are concerned. Therefore the Ordinary who first summons witnesses is entitled to complete the preliminary trial.

2. The *postulator* then demands of the Ordinary: (a) to requisition the writings of the Servant of God, and (b) to institute an inquiry concerning the fame of sanctity and virtues, or martyrdom and miracles. This is required in order to answer the following questions: Whether there was in the place a constant and general fame and persuasion of the saintly life of the Servant of God, or of his martyrdom, and the reason thereof, also of the miracles wrought by his intercession; and whether this veneration still exists at present and in what manner it manifests itself.

3. Then the acts and results of the inquiry are sent to the S. Congregation, where the *dubium* is proposed: *"An signanda sit commissio introductionis causae."*

4. After this the *litterae remissoriales* are dispatched to the diocesan judges, in order to arrange for the (delegated) apostolic process on the *casus exceptus,* the result of which is again forwarded to Rome, where the final sentence is given, investigation into the virtues or martyrdom ordered, and finally, the so-called decree of equivalent beatification (*aequipollens beatificatio*) is issued.

SECTION III

MODE OF PROCEDURE IN VARIOUS CASES

1. *General Rules*

1. In all these trials a *notary* should be employed. He should put the acts in writing and see to it that they are signed by all concerned and preserved in the archives.

2. *Admonitions,* if necessary, may be made orally or in writing. If they are administered *orally,* this must be done by the Ordinary in the presence of the chancellor or some other official of the diocesan court, or of two witnesses. If by *letter,* the latter should be registered and receipted for by the post office.

Whoever prevents the admonition from reaching him is regarded as having been admonished.

3. *Examiners, consultors,* and the *notary* must at the very beginning of the trial promise under oath to keep the secret.

4. No appeal, but only a *recourse* to the Holy See (*S. C. Concili*) is open from a definite sentence in any of these trials. If recourse is had, all the documents must be forwarded to Rome. This recourse must be treated like an appeal, of which can. 1881 says that it should be made within ten days by notifying the judge who has given the sentence. Pending the recourse, the Ordinary *cannot validly* confer the parish or benefice of which the clergyman has been deprived on another, except temporarily. Therefore no permanent appointment can validly be made pending a recourse. This follows from the nature of the case.

2. *Removal of Irremovable Pastors*

An irremovable pastor may be removed from his parish for any reason which renders his ministry harmful, or at least inefficient, although there may be no grievous fault implied on his part. These *reasons* are:

1. *Inexperience or permanent mental or bodily infirmity, which render the pastor incapable of discharging his obligations properly,* provided the Ordinary is convinced that the welfare of the souls in his charge cannot be safeguarded by the appointment of a coadjutor, according to can. 475.

2. The second reason is *hatred of the people, even though unjust and not general,* if it is so violent as to prove an obstacle to the pastor's useful ministry and not likely to cease within a short time.

3. The third reason is *loss of esteem among righteous and serious-minded men.* Esteem is paid to the office and authority of the pastor, and the loss of it necessarily renders the exercise of the sacred ministry ineffective, if not detrimental. The persons whose esteem the pastor has lost must be *men of character,* not garrulous women, even though of the "upper" class.

4. The fourth reason is a *probable crime imputed to the pastor, which, though secret, in the bishop's judgment may cause great scandal among the faithful.*

5. The fifth reason is *bad administration of the temporalities, resulting in great damage to the church or benefice.* This is *culpable* if it involves a misappropriation or embezzlement of public funds, *i.e.,* funds belonging to the church or diocese, diocesan collections, etc., or risky speculations, which are a sort of illegal gambling. It may not involve moral fault, but simply result from *financial in-*

capacity or inability to keep books and collect the revenues of the church or benefice.

Invitation to Resign

After setting forth the reasons which may advise a removal, the Ordinary shall invite the delinquent pastor to resign. This invitation may produce no effect, because the pastor does not answer, or it may produce the desired effect, *i. e.*, cause him to resign. If the pastor refuses to resign and offers reasons for his refusal, the way is open to legal procedure proper, as seen in can. 2151 ff.

1. Whenever the Ordinary is convinced that a pastor is guilty of mismanagement, for one of the reasons stated in the preceding canon, then he himself, or his vicar-general must proceed as follows:

a) He must *call in two examiners,* either synodal or pro-synodal, and hear their *advice,* though he is not bound by their consent (can. 105, n. 1.°).

b) With these two examiners he should *discuss* the truth and seriousness of the charges made against the pastor, because discussion may remove doubts and clear up the case.

c) After the discussion he shall *invite the pastor to resign.* This invitation may be made orally or in writing, but should always be accompanied by the indication of the term within which the resignation is expected. Although our text does not prescribe that the *oral invitation* be made in the presence of the chancellor, or of some other diocesan official, or of two witnesses, yet, since it amounts to an admonition, it seems to us that can. 2143, § 1, 2 must be applied. A *written* invitation to resign should be sent by registered mail.

d) This invitation may be *omitted* only in case the

pastor suffers from a mental defect, which in the *"Maxima cura"* (can. 9) is simply styled "insanity." But the term *vitium mentis* is somewhat broader than insanity. It may include habitual melancholia (this is now regarded by scientists as a form of insanity).

e) In order to render not only the invitation itself, but all the following acts, juridically *valid,* the Ordinary is bound to state in the invitation the *reason* that prompted him to issue the invitation and the *evidence* which supports it.

2. If the *pastor ignores the bishop's invitation* to resign within the appointed time, *i. e.,* if he does not resign nor ask for delay or dilatory terms, nor rebut the reasons alleged, the Ordinary must make *two inquiries,* one touching the juridical formalities, and the other concerning the fact whether, and be morally certain that, (a) the invitation to resign has been properly made and reached the pastor and that (b) the pastor had no lawful excuse for not answering the same.

If the pastor resigns his parish, the Ordinary shall declare the same *vacant by resignation.* This fact must be expressly mentioned because of the formalities required for the bestowal of the vacant parish on another, according to can. 184-187, and also on account of can. 1485. Formerly no office or benefice made vacant by resignation could be bestowed on relations of the *resignans;* but the Code is silent on this condition.

The *resignation may be made absolutely or conditionally,* provided the Ordinary is entitled to accept, and does accept, the conditions. A resignation is *absolute* if no simoniacal or other condition enters into the transaction: *conditional,* if a clause is attached in the act of resignation.

The pastor may *oppose the reason* alleged in the invitation if he is convinced that it has no foundation except

gossip. In that case he is entitled to demand *dilatory terms*—the extent of which is not determined in the Code—in order to prepare his defence. Whether and how much delay may be granted depends on the Ordinary's judgment, which, however, should be guided not only by charity towards the pastor, but also and chiefly by consideration for the *bonum commune*.

Proceeding of the Ordinary

1. The pastor shall duly prepare *his defence,* for which purpose he may produce two or three witnesses, according to can. 2145, and also papers referring to the case. Here, of course, much depends on the reason that prompted the invitation.

2. After the defence has been produced, or if it is made orally during the hearing, the Ordinary is bound to call the *two examiners, in order to hear their advice.*

The *decision is left entirely to the Ordinary,* who is not bound by the consent, much less, of course, by the advice, of the examiners.

The *result* of the bishop's decision may be either positive or negative, *i. e.,* he may either *accept* the defence of the pastor as sufficient to clear him, or he may *reject* it as insufficient. In either case the decision must be communicated to the pastor in the *form of a decree.*

3. The next stage in the procedure is a possible *recourse* on the *part of the pastor. Recursus* is not equivalent to appeal, and consequently does not *suspend* the effect of the decree. The *modus procedendi* is as follows:

a) The recourse against removal must be lodged *within ten days* from the date of receiving notice of the decree.

b) The recourse is to be presented to the *same Ordinary* who issued the decree of removal. If he should

have gone out of office in the meantime, either by death, resignation or transfer, the recourse may be sent to the vicar-capitular (administrator). However, we believe that in this case the equitable time should be suspended until the new Ordinary's arrival, unless the scandal is too great.

c) Then the Ordinary grants the pastor *another ten days,* within which he may produce his new defence. Thus the pastor has twenty days in all from the date when he receives the notice of his removal, in order to prepare his second defence.

d) The Ordinary must call in two *pastors who are consultors* in order to proceed *validly* in the examination of the new allegations. These new allegations may be accompanied by *new witnesses,* whom the pastor could not produce at the first trial. But the pastor must prove that the new witnesses could not be brought to the witness-stand before. To prove that, it would be sufficient for the witnesses to affirm it, because they are under oath, according to can. 2145.

With these two consultors the Ordinary shall discuss the case, as he did before with the examiners. However, in order fully to enlighten the consultors, the allegations and depositions made in the first pleading in presence of the examiners must again be scrutinized. The consultors have no decisive vote.

e) Then comes the *decision, in the form of a decree,* wherein the presence of the consultors together with the reasons in general (as above) is mentioned.

f) This *decree* must be *communicated to the pastor.*

4. Supposing now that the *decree insisted on removal* and was duly notified to the pastor, it appears but logical that the parish should be declared vacant, at least *de iure;*

although no declaration to that effect is required by the Code.

Then the Ordinary must proceed as follows:

a) If the invitation was accepted or obeyed after the first plea for defense, without recourse, *the examiners* must be called to a meeting, the purpose of which is to provide for the removed pastor.

b) If recourse was had, and a second defense is therefore required, the *consultors* must be called in for the same purpose.

c) The *debate* concerns the mode of providing for the removed pastor, either by transfer to another parish, or by appointment to another office or benefice, provided he is fit for any of these places, or by a pension. The correct mode must be determined by the nature of the case and the circumstances.

d) All other things being equal, one who has *resigned is to be favored* rather than one who was removed.

The Code leaves it to the prudent judgment of the Ordinary how to provide for the removed pastor.

The removed pastor must, as soon as possible, *leave the parochial residence* and hand all the belongings of the parish to the new pastor or administrator *pro tempore,* appointed by the Ordinary. *"Omnia quae ad paroeciam pertinent"* signifies all the parish books, all the account books, and all the utensils or *sacra suppellex* belonging to the parish.

3. *Removal of Removable Pastors*

1. The removal of a removable, no less than that of an irremovable, pastor requires a *just and grave cause, i.e.,* one of those stated in can. 2147.

If the *pastor* is a religious, the procedure is very simple. See can. 454, § 5, where it is said that pastors belonging to a religious community may be removed *ad libitum* either by the local Ordinary or by the religious superior. The one has only to notify the other of the removal, without stating the reasons. Recourse to the Holy See is admissable, but with devolutive effect only.

2. If the local Ordinary is convinced that one of the reasons stated under can. 2147 can be advanced against a removable pastor, he shall *paternally warn and exhort* the latter to resign the parish, and state the reason why his pastoral ministry has become detrimental or at least useless. No special formality is required for this admonition, which is expressly styled paternal, *i. e.,* non-canonical. But a certain and fixed term must be given the pastor for answering the Ordinary's demand.

If the warning is given in writing, it should be sent by registered mail, because can. 2149 also applies in this case.

3. *If the pastor does not act* after being thus warned, he may be removed at once without the benefit granted by can. 2154. If he answers *negatively, i. e.,* if he refuses to resign, he must state the reasons for his refusal in writing. The Ordinary shall then *discuss these reasons with two examiners.* This discussion is required for *valid* procedure.

4. If the Ordinary, after having heard the advice of the examiners—which he is *not* bound to follow—deems the reasons brought against the removal futile or unlawful, he shall repeat the exhortation to resign under *threat of involuntary removal* in case the pastor refuses to leave the parish within the time appointed.

5. After the expiration of this term (which may, however, according to the prudent judgment of the Ordinary,

be prolonged) the Ordinary shall issue *the decree of removal.* This, of course, must be *intimated* to the pastor. This is the last phase and requires no recourse and no calling in of the consultors. But provision is to be made just as for irremovable pastors, and therefore canons 2154–2156 apply to this case.

4. *Transfer of Pastors*

1. The Code states that if the welfare of souls requires that a pastor be transferred from a parish which he has governed successfully to another parish, the Ordinary shall propose the matter to the pastor and persuade him to accept the transfer for the love of God and of souls. The reason for the transfer is here supposed to exist in the parish to which (*ad quam*) the pastor is to be transferred. It may be that this parish is financially or spiritually neglected, or that factions or parties are tearing it up to the detriment of souls.

2. The Ordinary, however, must duly consider the character of the pastor, whether he is removable or irremovable, and whether he is willing or not to accept the transfer. For the Ordinary (*iure ordinario*) *has no right to transfer an irremovable pastor* against his will to another parish without special faculties from the Apostolic See.

3. A *removable pastor* may be transferred to another parish *even against his will,* provided the parish to which he is to be transferred is not of too low a rank, and provided the Ordinary proceeds according to the canons.

What *"inferioris ordinis"* means has been touched upon above. The inferiority may be owing to a smaller income or to less importance or smaller size. The pastor, as stated before, may have his own ideas about the superiority or inferiority of a parish. If he accepts the parish of-

fered to him, no further formality is required, except that he declare his willingness to accept, in order that the Ordinary may declare the parish vacant,—but not by resignation. For it is a transfer, not a resignation.

4. If the removable pastor thinks he has reasons for *not following the advice of the Ordinary,* then

a) He must *state in writing* the *reasons* for his unwillingness to accept the transfer, *e. g.,* his health, his mental qualities, his financial condition, etc.

b) The Ordinary shall then ponder the reasons given and consider the status of the parish. If, after due deliberation, he insists upon the transfer, he is bound, for *valid procedure,* to hear the opinion of *two pastors-consultors* on the reasons advanced, on the condition of both parishes (*viz.,* the one from which and the one to which the removable pastor is to be transferred), and, finally, on the reasons of necessity or utility which apparently demand a transfer.

c) If the Ordinary, after having heard the consultors, still insists on the transfer, he may *renew his paternal* (not canonical) admonition.

d) If this proves fruitless, and the Ordinary remains unmoved in his former decision, he *shall command* the removable pastor (*parocho praecipiat*) to repair to the new parish within a certain time. This is a formal precept, to be served *in writing,* wherein the Ordinary declares that, after the expiration of the time granted the pastor for going to his new parish, the parish which he holds at present will be *ipso facto* vacant. But a reasonable time should be given. Twenty-four hours is not considered reasonable. Ten days is more acceptable.

e) After the expiration of the appointed time, if the removable pastor has not gone to the parish assigned, his *old parish must be declared vacant.*

5. *Procedure Against Non-Resident Clerics*

a) The Ordinary shall first issue a *canonical warning* or *admonition* and in the meantime, in the case of a negligent pastor, provide as well as he can for the welfare of his subjects. The expenses of this temporary provision must be borne by the careless pastor.

b) The admonition may or may not produce the desired effect. *Three hypotheses* are conceivable: Either the cleric does not heed the warning at all, or he takes up his residence without further ado, or he gives reasons for his absence.

(1) If the cleric *neither takes up his residence nor gives reasons* for his absence within the term appointed in the admonition, the Ordinary shall declare the parish or benefice vacant. However, to do this validly, he must first make certain that the canonical warning was duly served and that there was no reason for not answering.

(2) If the cleric *returns to his residence,* the Ordinary *must,*—if the absence was entirely unlawful (of which the Ordinary is the judge),—deprive him of a pro rata share of his income, and *may* also inflict other punishments proportionate to the guilt incurred. The pro rata share of the income is to be reckoned by the time of the unlawful absence.

(3) If the cleric does not return to his residence, but *submits reasons* for his absence, the Ordinary must call in two examiners, hear their advice, and investigate whether the reasons are acceptable and lawful. Lawful would be sickness, or necessary business transactions connected with the parish or benefice, or other reasons which Christian charity or necessity dictate. Should the Ordinary, after having heard the examiners, think the proffered reasons

unacceptable or unlawful, he must assign *another term for the cleric's return* to his residence. The fine for unlawful absence runs in the meanwhile.

At this stage, *i. e.*, after the second warning, with a new term appointed for the absentee clergyman, another distinction is introduced and must be duly considered, *viz.*, the difference between a removable and an irremovable pastor.

(a) A *removable pastor* who does not return after the second canonical warning, *may* (not must) *be deprived* of his parish immediately after the appointed time has elapsed. If he returns within the time set, the Ordinary shall *issue a precept* to the effect that if he again leaves the parish without a written permission, he shall be *ipso facto* deprived of the parish. It is not only advisable, but necessary, that a copy or abstract of this precept be kept in the archives of the diocese for further use. We may also add that a written permission is needed for protracted absence. But it does not mean that a removable pastor can not leave his parish for one or two days a week, provided this does not occur too frequently.

(b) If a cleric who holds an *irremovable benefice* (our irremovable pastors are here included) does not return to his residence after being duly warned, but brings forward new excuses for his absence, the Ordinary shall *discuss with the examiners,* whether they may be admitted as lawful. If not, he shall not demand other proofs, but simply command the cleric to return within the time already appointed or a new term now fixed, under penalty of privation of benefice, to be incurred *ipso facto.*

If the cleric does not return within the prescribed time, the Ordinary shall *declare* him deprived of his benefice; if he returns, the Ordinary shall give him a *precept* like that issued in the case of removable pastors, *viz.*, not to

leave the place a second time without a written permission, under penalty of *ipso facto* incurring privation of benefice.

However, in neither case (whether the cleric be removable or irremovable), should the Ordinary declare the benefice vacant unless he has first discussed the reasons alleged with the *two examiners* and ascertained for himself that the cleric was unable to obtain a written permission or leave of absence. For it may be that the pastor or beneficiary was retained unlawfully in a place and had no means of communicating with the bishop, or that communications were interrupted for a long time. Besides, it sometimes happens that the secretary or chancellor makes a mistake in opening or reading the mail. The same may happen to the bishop. Hence it is advisable for a clergyman to ask for leave of absence by registered letter.

6. *Contra Concubinarios*

1. The Code requires a canonical warning, which is to be administered according to can. 2143 and is called personal and special, *i. e.*, directed to the clergyman himself, with special mention of the imputation. Besides, the admonition must also contain the threat of the penalties *ferendae sententiae* which are mentioned in can. 2359.

The Code goes on to lay down the rules of procedure after the canonical warning has been issued. Here, again, three hypotheses are possible.

Provided the warning or precept was duly made and no answer returned, the Ordinary shall proceed as follows:

(a) He shall *suspend* the cleric *a divinis, i. e.*, from exercising the acts of the power of ordination (can. 2279, § 2, n. 2°);

(b) If he is a *pastor,* he shall be immediately deprived of his parish;

(c) Against a *beneficiary* without the care of souls, the Ordinary shall deprive him of one-half of his income if he does not amend within six months from the date of the suspension; after three more months of all the income, and after three more months of the benefice itself, again provided that no emendation has followed.

2. It is possible that the cleric does not obey the injunction of the Ordinary, but *proffers excuses*. In that case the Ordinary must call in *two examiners* and discuss with them the validity or lawfulness of the reasons alleged. This discussion is absolutely required, although the Ordinary is not bound to accept the views of the examiners. But, as stated above, the reasons must be impartially discussed, as also the testimonies on the strength of which the cleric was charged with this offense.

3. The third *hypothesis* is that the Ordinary, after discussing the proffered reasons with the examiners, finds them *unfounded* or unlawful, either because they are insufficient or because the evidence is too weak. The *result of this negative finding* must as soon as possible be *communicated* to the suspected cleric, together with a formal precept to obey the injunction given in the former warning within a term appointed by the Ordinary. The length of time is not precisely determined except by the adjective (*breve*) which may be interpreted as meaning ten days, more or less, according to circumstances or persons and the danger of scandal.

If these new reasons are rejected by the Ordinary, he must issue *another precept* (which might be called the third canonical warning) bidding the accused cleric to abide by the injunction of the Ordinary, or rather to carry it into effect within the time appointed for that purpose. If the irremovable clergyman does not dismiss the obnoxious woman, or give up her company, the Ordinary shall

proceed as stated in can. 2177, *i. e.*, he shall inflict suspension and deprive the culprit of his parish, of his income, and of his benefice.

Note that can. 2180 permits the Ordinary to proceed, after the third warning, against a removable clergyman in the same way as against an irremovable one. While *recourse is admitted,* it has no suspensive, but only a devolutive effect.

7. *Against Neglectful Pastors*

The *neglect* here mentioned concerns:

1. The *administration of the Sacraments,* pastoral correction and charity, care of the sick and dying (can. 467, § 1; 468, § 1);

2. *Catechetical instruction* and *personal preaching,* especially on Sundays and holydays of obligation (can. 1330–1334; 1344);

3. *Neatness and decorum in the house of the Lord,* which includes care that no profanation occurs (can. 1178).

If a *pastor,* who is personally responsible for all the things mentioned, *grossly neglects or violates* the regulations laid down by the law, the bishop shall *warn* him, remind him of the strict and grievous obligation imposed on his conscience, and of the penalties with which the law visits such offenses.

If the pastor, after a warning has been duly administered, does not mend his ways, the bishop shall rebuke him and mete out a punishment commensurate with the gravity of his neglect.

However, rebuke and punishment may be inflicted only *after* the bishop has heard the advice of two examiners *and* after the pastor has been given a chance to defend himself.

This defense may be made personally or by proxy, orally or in writing. If the pastor does not succeed in purging himself of the charge, rebuke and punishment may follow, and are deserved. The defense shall, of course, turn about the fact and about the reasons or excuses that the accused may offer for his neglect.

If neither rebuke nor punishment proves effective, the Ordinary shall again call in the examiners and discuss the facts and excuses with them. If the same culpable neglect continues, and concerns a serious matter, he *may* remove a *removable* pastor from his parish without further ado. An *irremovable pastor* he shall deprive of either a part or the whole of his income, according to the gravity of the neglect, and distribute the money among the poor. If the ill will should continue and become manifest, the Ordinary may remove also an irremovable pastor from his parish.

8. *Suspension ex Informata Conscientia*

Ordinaries are allowed ex informata conscientia to suspend their clerical subjects from office, either partly or totally. The object of this sentence *ex informata conscientia* is *suspension* from *office.* If the suspension is *ab officio,* without further determination or limitation, it forbids every act of order, jurisdiction, and administration implied in the office itself, except the administration of the benefice as such.

The prelates who may inflict this suspension are here simply called *Ordinarii, i. e.,* all who go by the name of Ordinary, according to can. 198: residential bishops, abbots and prelates *nullius,* vicars and prefects apostolic, administrators, and religious superiors of exempt clerical orders.

The vicar-general is excluded, unless he has obtained a special commission from his bishop (can. 2220, § 2).

In order, however, to remind Ordinaries of the *extraordinary character of this power,* they are warned to make use of it for no frivolous reasons; in other words, they *should not inflict suspension ex informata conscientia when they can proceed in the judiciary way without grave inconvenience* (can. 2186, § 2).

Can. 2188 rules that the *decree of suspension* must be issued *in writing,* unless the circumstances should advise another mode, for instance, when there is a well-founded suspicion that the clergyman or others are bent on causing trouble in any shape or form. The decree must contain the *accurate date, i. e.,* day, month, and year of issue. Besides, it must contain the following statements:

1.° That the suspension is inflicted *ex informata conscientia,* or for reasons known to the Ordinary;

2.° That it is inflicted for a certain clearly expressed period of time;

3.° A specification of the *acts* forbidden if the suspension is partial only.

Can. 2189 rules that the Ordinary who suspends a cleric *ex informata conscientia* must have evidence sufficient to be certain (1) that the cleric really perpetrated the crime with which he is charged, and (2) that the crime is of a nature to deserve such a severe punishment.

1.° *A just and legitimate cause* for suspending a cleric *ex informata conscientia* is an *occult crime, i.e.,* one which is not yet divulged or has been committed under, or is involved in, circumstances which render it unlikely that it will become known. *"Occultum, quod non est publicum,"* says can. 2197.

2.° Suspension *ex informata conscientia can never be*

inflicted for a *notorious crime* because such a crime requires judiciary procedure, in order to safeguard public welfare and justice and the authority of the law.

3.° The Code makes some concessions to those who hold that this suspension may be inflicted *also for a public crime,* but it requires that at least *one of the* three following *conditions* be present:

a) That trustworthy and serious witnesses made the crime known to the Ordinary, but cannot in any way be induced to make depositions at a trial, and no other evidence is at hand to prove the crime in a judiciary way;

b) that the clergyman would use threats or other means to impede or stop a judiciary trial;

c) that the civil law or a serious scandal stand in the way of a formal trial or judicial sentence. This is possible in countries where the *brachium sæculare* not only does not assist but opposes the Church.

Since there is no judiciary procedure involved, it is left to the prudent judgment of the Ordinary to manifest or conceal the reason for the suspension. If he deems it prudent to make the reason known to the suspended cleric, he should use pastoral care and charity, in order that the penalty inflicted and accompanied by paternal admonitions, will not only procure an atonement of the transgression, but also better the delinquent and eliminate further occasions of sin.

The lawgiver, however, in order not to leave the suspended clergyman entirely defenseless, which would be against every dictate of justice, allows him to *have recourse to the Apostolic See* (*S. C. Concilii*). Hence there is no appeal to the metropolitan or second instance. This recourse has no suspensive, but only a devolutive effect, and the suspended clergyman must therefore conduct himself as one suspended, and abstain from every

act prohibited by the suspension, whether specifically or generally stated.

The *Ordinary* must forward the papers to the same S. Congregation. They must contain the evidence or proofs that the clergyman really committed the crime for which he was suspended *ex informata conscientia.* These must be sent in trustworthy and correct abstracts bearing the official seal and signature. If the witnesses do not object, the original documents may be sent, provided a faithful translation accompanies the vernacular text.

PART V.

COERCIVE POWERS OF ORDINARIES

Of the coercive or punitive power which the Ordinaries wield over their delinquent subjects the Code treats in the fifth book, the first part of which is devoted to the consideration of crime (*delictum*), while the second deals with penalties in general, and the third with penalties in particular. What concerns the subject here under consideration may be very briefly stated, and is chiefly contained in the second part. We premise a *definition of crime.*

A *crime,* in ecclesiastical law, *is an extreme and morally imputable transgression of a law to which is attached a canonical sanction,* at least in general.

Three kinds are distinguished: public, notorious, and occult crimes.

a) A *public* crime is one committed under, or accompanied by, circumstances which point to a possible and likely divulgation thereof.

b) A *notorious* crime may be such either by notoriety of law or of fact. It is *notorium iuris* if it has become an adjudged matter, or is judicially confessed (can. 1750). A crime is notorious *notorietate facti* when it is publicly known and has been committed under such circumstances that it cannot be concealed by any artifice or be excused by any legal assumption or circumstantial evidence.

c) Every crime which is not public, says the Code, is *occult* or secret, and distinguishes a twofold secrecy, *viz.,* merely material (*materialiter occultum*), which exists when the fact is unknown, or known only to the per-

petrator and a few reticent persons; and formal (*formaliter occultum*), when the moral and juridical guilt is unknown.

SECTION I

PENALTIES IN GENERAL

The Code advises moderation combined with firmness in the infliction of penalties, and lays down the rule that penalties must be proportionate to the crime, which is to be understood according to its imputability as well as the scandal and damage caused.

1. An *ecclesiastical penalty* means the privation of some good, inflicted by lawful authority for the correction of a delinquent and in punishment of a crime. Its purpose is reformatory and punitive. Every society has, or should have, in view this aim,—to protect itself and lead the delinquent to a better life.

2. Three kinds are mentioned: censures or corrective (medicinal) penalties, vindictive penalties, and penal remedies and penances.

3. A *fixed* penalty *latae sententiae* as well as *ferendae sententiae* may be established by law (*a iure*). For instance, clerics who violate the *privilegium canonis* against cardinals and papal legates incur two penalties *ipso iure latae sententiae* and besides are to be deprived of their benefices, offices, dignities, which is a penalty *ferendae sententiae,* although both kinds of penalties are laid down in law (can. 2343).

Ab homine is a penalty which, though established by law, is inflicted by way of a special order *per modum praecepti peculiaris,* or by a condemnatory judiciary sentence.

Penalties must be understood to be *ferendae sententiae,* unless *ipso iure* or *ipso facto,* or similiar terms are used. The general rule is that a penalty *ferendae sententiae* requires at least a summary trial.

Superiors with Coercive Power

1. Those who wield legislative power, the Pope and the Ordinaries, may attach a penal sanction to their laws. Vicars-general need a special mandate to do so.

2. The general rule is that no penalty is to be inflicted without a threat or *canonical warning.* This warning must contain a penalty of either *ferendae* or *latae sententiae* before the transgression. For in case the transgression is proved, the penal sanction goes into effect. This canonical warning is not required if scandal has been given or the transgression is of a particularly serious character.

3. The *judge,* as such, has only to *apply* the penalty stated in law, and therefore should observe the rules of procedure, *viz.*:

a) He is not allowed to increase a fixed penalty, unless extraordinary circumstances demand a severer punishment; *e. g.,* the atrocity of a crime, the scandal given, etc. The increase may consist of multiplication or added intensity; for instance, suspension and detention in a house of correction, or suspension from office and benefice, etc;

b) If the penal law *ferendae sententiae* is couched in arbitrary terms (*verbis facultativis*), it is left to the conscience and prudence of the judge to mete out the penalty or dictate the minimum penalty if this is fixed;

c) If the wording of the penal law is compulsory (*ver-*

bis praeceptivis), the penalty must, as a rule, be inflicted. There are precepts couched in the subjunctive or gerundive form, *e. g., "privetur," "privandi sunt," "debet puniri, suspendi, removeri,"* etc. Yet even in this case the legislator leaves it to the conscience and prudence of the judge, both of which qualities suppose that he decides objectively, not subjectively or under the influence of passion. But he may also, if advisable, delay or mitigate a penalty already fixed, and abstain from inflicting it in case of sincere reform.

d) Finally, if the sentence is a *judiciary* one, the judge must observe the rules given in can. 1968 ff. for pronouncing sentences. Besides, if a penalty, more especially a censure, whether *latae* or *ferendae sententiae,* is to be inflicted by way of a particular order or precept, it must be declared to have been incurred (*latae sententiae*), or actually inflicted, in writing or before two witnesses, and the reasons for it given.

Who Are Subject To Penal Laws

The general rule is that those who are subject to laws or precepts are also subject to the penal sanctions attached thereto, unless they are expressly exempted. Hence

a) The *lawgiver* himself is not subject to purely ecclesiastical penalties by compulsion *(vi coactivâ),* though morally speaking, or from a sense of propriety *(vi directivâ)*, he may be said to be subject to them. Practically it is better to say that he is not subject to his own penal laws.

b) *Rulers* of nations and their offspring and successors are immediately subject to the Roman Pontiff, who alone

can issue a condemnatory or declaratory sentence against them (can. 2227, § 1).

c) *Cardinals* are immune from penal laws, unless they are expressly mentioned as subject to them. Thus in the Constitution of Pius X, *"Vacante Sede"* (*e.g.,* n. 51), they are threatened with excommunication *latae sententiae* if they reveal the proceedings of a papal conclave. They are also mentioned in can. 2397, concerning the oath they have to take.

d) *Bishops* are not subject to the penalties *latae sententiae* of suspension and interdict, unless they are expressly mentioned, as in can. 2370 and also in can. 2373. Although the name "bishop" does not occur in the latter canon, it certainly applies to Ordinaries. Other penalties, like excommunication and privation of income (can. 2398) they may incur.

e) *Exempt religious* are subject to the penalties established by common law, and as far as the common law subjects them to the coercive power of the local Ordinary. *Religious who do not enjoy the privilege of exemption* are subject to the penal laws of the Code and also to those established by the particular laws of their territory, unless their approved Constitutions modify, restrict, or enlarge the power of the local Ordinary over them.

Remission of Penalties

Penalties may be removed by way of *absolution* or *dispensation.* The former is applied to censures, the latter to vindictive penalties. Both presuppose jurisdiction over the person as well as the matter at issue, because of the juridical tie contracted by crime and penalty (*vinculum reatus et poenae*). The judge who *ex officio* applies a penalty established by a superior, cannot remit the penalty

thus inflicted; having rendered the sentence, his office is completed.

The *Ordinary* may remit all penalties *latae sententiae,* either corrective or vindictive, established by common law, except the following:

a) Cases brought before the civil ecclesiastical court, as when civil action is instituted in order to obtain damages for a crime.

b) Cases reserved to the Apostolic See, either simply, or especially, or most especially.

c) Penalties entailing to hold benefices, offices, dignities in the Church, penalties referring to the active and passive vote and privation thereof, perpetual suspension, infamy by law, privation of advowson, and privileges or favors granted by the Apostolic See.

In *occult cases latae sententiae,* established by common law, the Ordinary as well as any one delegated by him may remit the penalties. An exception to this general rule are the censures which are reserved either *specialissimo or speciali modo* to the Holy See. In occult cases, the Ordinary may delegate another, as per can. 199, § 2, either for each separate case or habitually.

Censures

1. A *censure* is defined by the Code as a *penalty by which a baptized person, delinquent and contumacious, is deprived of certain spiritual benefits, or benefits connected with spiritual ones, until he has given up his contumacy and obtained absolution.*

Contumacy may be said to cease (can. 2242, § 3) when the delinquent repents of the crime he has committed, makes proportionate satisfaction for the damage he has done, and repairs the scandal given, or at least seriously

promises to do so. Whether the repentance is sincere, the satisfaction sufficient, or the promise serious, must be judged by the one who is asked to give absolution.

Recourse from censure has only a devolutive effect, *i. e.*, the whole case is thrown upon the court of appeal, but the one thus censured must conduct himself as if he were censured, *i. e.*, abstain from every act of order, jurisdiction, or administration forbidden by the censure.

2. *Reservation of censures* may be made either *ab homine, i.e.,* by the lawful superior, or *a iure, i.e.,* as stated by a general or particular law. Censures reserved *ab homine* are reserved to the one who inflicted the censure, to his superior, successor or delegate. Therefore, if a priest has been censured by his bishop, the censure may be reserved to the Pope, to the bishop's successor, or to his delegate.

Censures reserved *a iure* are: (a) those reserved to the Ordinary; (b) those reserved to the Apostolic See; and (c) those reserved to no one. To the *Apostolic See* some are reserved (a) simply, some (b) especially, and some (c) most especially.

Censures *latae sententiae* are *reserved* only if the reservation is expressly stated in the law or precept which contains or threatens the reservation. If a doubt exists concerning the reservation, it need not be observed, *i. e.*, any confessor may absolve therefrom. Reservation of censures must be strictly interpreted.

The *effect of reservation* depends on receiving the Sacraments; thus: (a) If it prevents one from receiving the Sacraments, a reservation involves reservation of the sin to which the censure is attached; (b) If it *does not prevent* one from receiving the Sacraments, the sin is not reserved, even though the censure is.

If one is excused from the censure, or has been absolved therefrom, reservation of the sin ceases entirely.

Can. 2247, § 1, forbids Ordinaries to attach another censure reserved to themselves to a crime already reserved to the Apostolic See. But we cannot agree with some writers who maintain the invalidity of a censure attached by the bishop to a censure already reserved to the Apostolic See.

The *territorial extent of reservation* is thus stated in the Code:

a) The reservation of censures made for a particular territory—by way of a territorial law—is restricted to the limits of that territory, diocese, or province, and has no binding force outside its boundaries, even though the person censured leaves this territory in order to be absolved, in other words, if he leaves his home *in fraudem legis.*

b) If, however, an Ordinary or judge would inflict a censure and reserve it to himself by virtue of a *special ordinance or condemnatory sentence* (can. 2217, § 1, n. 3), such a reserved censure would bind the censured person everywhere, so that he could not be absolved unless the confessor had obtained special faculties for the purpose.

There is some comfort in can. 2247, § 3, because a confessor, especially when tired, may not always have all the reserved censures present in his mind. Hence, if a confessor, *unaware of a reservation,* would absolve a penitent from censure and guilt, the absolution from censure would be valid. Exception, however, is taken to censures inflicted *ab homine* and the four censures "most especially" reserved to the Apostolic See.

3. *Absolution from censures* is required and may be claimed by such as recede from contumacy. A censure duly removed never revives. One who has incurred

several censures must mention them in his petition; but an absolution imparted in general terms is valid for all. One may be absolved from sin, and therefore be in the state of grace, yet remain under censure. On the other hand, when there is question of a censure which prevents the reception of the Sacraments, absolution from censure must be imparted before absolution from sin can be licitly granted.

The *formula of absolution* is thus determined: (a) If absolution is given in the tribunal of penance (*in foro sacramentali*), the usual form contained in the Roman Ritual should be employed. (b) In the non-sacramental forum (*in foro non-sacramentali*), either for the court of conscience or for the external forum, any formula may be used if no excommunication is implied; hence also the short formula for the confessional is permitted. (c) If, however, absolution is to be given from excommunication, the formula prescribed in the Roman Ritual (or Pontifical) should, as a rule, be employed.

Absolution given *in foro externo* affects both *fora,* the internal as well as the external. If the absolution is given *in foro interno,* the person absolved may conduct himself as one freed from censure also concerning acts of the external forum, provided the scandal has been removed.

4. *Those empowered to absolve from censure* are mentioned in can. 2252–2254, which distinguish three classes of cases: normal, danger of death, and urgent.

a) As to *normal cases,* when there is neither urgency nor danger of death, can. 2253 distinguishes as follows:

(*a*) From *non-reserved censures* every duly approved confessor may validly and licitly absolve in the tribunal of penance. If absolution is to be given outside the confessional, it must be imparted by one who has jurisdiction over the delinquent *in foro externo.*

(β) From *censures reserved ab homine,* only he who has inflicted the censure, or his competent superior, or his successor or delegate, can absolve.

(γ) From *censures reserved a iure,* only the one who made the law, his superior, his successor or delegate, can absolve.

The *Ordinary may absolve his subjects everywhere* from censures reserved *episcopo* or *ordinario;* the local Ordinary may also absolve *peregrini.* By "Ordinary" are understood all those who go by this name: the bishop, vicar-general, adminstrator, apostolic vicars and prefects, and major superiors of exempt religious organizations.

Only the *Apostolic See* can absolve *de iure* from censures reserved to itself; every inferior needs faculties, which are of a threefold kind:

1°. A special faculty is required for absolving from censures which are reserved to the Apostolic See *simplici modo.*

2°. A special faculty is required to absolve from censures reserved to the Apostolic See *modo speciali.*

3°. A most special faculty is needed to absolve from the four cases reserved to the Apostolic See *modo specialissimo.*

b) *In danger of death* one may be absolved *by any priest,* even though that priest has no jurisdiction or faculties to absolve from the censure in question; but after recovery, *i. e.*, after being fully restored to health, the penitent is bound to have recourse to the proper authority, under penalty of falling back into the censure.

If absolution has been given from a censure reserved *ab homine,* or *modo specialissimo* reserved to the Apostolic See, recourse must be had to the one who inflicted the censure, if it was a censure *ab homine.* The recourse must be had to the S. Poenitentiaria, or to the bishop, or to an-

other endowed with the faculty of absolving, if the censure was *a iure, i. e., specialissimo modo* reserved to the Holy See.

This recourse implies that the penitent abide by the order of the respective superior. The term *"mandatis parendi"* implies willingness and promptness to carry out the injunctions given, either orally or in writing. Generally there is attached to the rescript of absolution the clause: *"iniunctis de iure iniungendis."* This signifies:

(α) that the censured party must give satisfaction to those who were hurt or damaged by the criminal act for which he or she was censured;

(β) that if scandal was given it must be repaired;

(γ) that other imposed works, such as sacramental confession or penance, must be accepted.

Danger of death may be supposed to exist when the penitent is in such a state that he has an equal chance of life or death, be the danger internal (sickness, wounds, birth, old age) or external (war, perilous journey).

c) *In more urgent cases* any duly approved confessor may validly and licitly absolve from each and every censure, no matter how and to whom it is reserved, provided it is *latae sententiae.*

Which cases are more urgent, is explained as follows:

(α) When these censures cannot be exteriorly observed without serious danger of scandal or loss of reputation, which may be the case if a priest would be obliged to exercise the sacred ministry, or if a layman in good standing would have to make his Easter Communion; to judge whether this case is verified belongs to the confessor.

(β) Or if it would be difficult for the penitent to remain in the state of grievous sin for the length of time required to obtain the necessary faculty from the competent superior. Whether and under what circumstances it would be

difficult for a penitent to remain in this state, must be left to the judgment of the confessor, who may apply the rule: *"Poenitenti credendum est."* Therefore, if the penitent should say that one day would be hard, we think our canon could be applied, though some authors hold that a week, or at least three or four days, are required.

The obligation of the confessor under such circumstances is:

(α) That he absolve in the tribunal of penance; hence he cannot absolve outside the confessional, because the *forum sacramentale* is not identical with the internal forum;

β) That he impose on the penitent the strict and grievous obligation of having recourse to the S. Poenitentiaria, or to a bishop or other superior endowed with the necessary faculties to absolve him, and to abide by their order;

γ) That this recourse be imposed *sub poena reincidentiae, i. e.*, under the penalty of falling back into specifically the same censure from which he is now absolved;

δ) To remind the penitent that recourse must be had within a month, to be reckoned probably from the day of absolution, or at least from the day when he became conscious of the obligation;

ε) To tell the penitent that recourse may be had by letter, in which case the proper names are to be suppressed and fictitious names used, or personally, because a personal visit to Rome is not excluded;

ζ) The confessor should remember that he, too, is bound to have recourse to competent authority, unless a serious obstacle prevents.

The penitent is at liberty to approach another confessor endowed with the necessary faculties and to obtain absolution from him. This right is granted even in case the

penitent has already been absolved (in urgent necessity) and has had recourse to the competent authority. But the penitent must again confess the censured sin to this other confessor, in order that the latter may know the nature of the case and impose the necessary injunctions. After receiving absolution the penitent has merely to carry out the orders given by the second confessor and is not bound to abide by the injunctions of the superior to whom recourse was had, which may reach him later.

If, in some extraordinary case, recourse should be morally impossible, the confessor may grant absolution without imposing the obligation of recourse. However, in that case, another obligation must be imposed, *viz., iniunctis de iure iniungendis,* and a proportionate penance and satisfaction for the censure. This obligation is so grave that if the penitent would not comply with the penance imposed and with the demand of satisfaction within the time fixed by the confessor, he would fall back into the same censure.

From this favor of omitting the recourse is excluded the case of *absolutio complicis* (can. 2367); poverty or the inconvenience of seeking another confessor are not admitted as excuses.

Here we may insert what can. 2229 rules concerning *imputability* which does or does not excuse from incurring an ecclesiastical penalty:

a) *Affected ignorance* (*ignorantia affectata*), *i. e.*, the kind that is purposely fostered in order to avoid the trouble of ascertaining the law and to have a pretext for transgressing it, does not render one immune from incurring the penalties *latae sententiae,* no matter whether this ignorance concerns the law itself or its penal sanction,—not even if the law contains words like these: "*prae-*

sumpserit," "ausus fuerit," "scienter, studiose, temerarie, consulto egerit," i. e., even though the law expressly demands a *dolus.*

b) If the law contains the terms quoted (*"praesumpserit,"* etc.) or similar ones, which require full knowledge and deliberation, every degree of diminished imputability, either of the intellect or the will, renders the offender with such lessened responsibility immune from penalties *latae sententiae.*

c) If the law does not contain the terms *"praesumpserit," "ausus fuerit,"* etc.:

(α) Crass or supine ignorance (*ignorantia crassa vel supina*) exempts from no penalty *latae sententiae.*

(β) Drunkenness, carelessness, mental weakness, impetuous passions do not exempt from penalties *latae sententiae,* provided the responsibility, though somewhat diminished, is still grievously culpable.

(γ) Grave fear by no means excuses from penalties *latae sententiae,* if the crime involves contempt of faith or of ecclesiastical authority, or public damage to souls.

d) *Impuberes, i. e.,* boys before the fourteenth and girls before the twelfth year of age, completed, are excused from penalties *latae sententiae,* and should be punished rather by reformatory educational means than by censures and severe vindictive penalties.

Particular censures are: excommunication, interdict, suspension.

1. *Excommunication*

1. *Excommunication is always a censure,* whereas interdict and suspension may be either censures or vindictive penalties; if it is doubtful whether they were inflicted as

a censure or as a vindictive penalty, they are presumed to be censures.

Suspension is proper to the clergy; an interdict may be inflicted also on laymen, nay, even on places.

There are two terms which the Code frequently uses in connection with penalties and explains more particularly:

a) By *divine offices* are to be understood those functions of the power of order (*potestas ordinis*) which have been established by divine or ecclesiastical authority and are performed only by the clergy. Such are the celebration of Holy Mass, the administration of the Sacraments and sacramentals (blessings, sepulture, public service, preaching, choir service, processions), etc.

b) *Legal ecclesiastical acts* are those of official administrators of ecclesiastical property; those of the following persons employed in the ecclesiastical court: judge, auditor, relator, *defensor vinculi* (for marriage and ordination), fiscal promotor and promotor of the faith (for beatification and canonization), courier and beadle, lawyer and proxy; those of sponsors at Baptism and Confirmation;—the (active) voice or right of voting at ecclesiastical elections, including those held by monastic chapters and chapters of religious communities and acts of actual (not habitual) exercise of the *iuspatronatus* or advowson.

What *excommunication* entails with regard to Ordinaries may be summed up as follows: (a) if they are excommunicated by a condemnatory or declaratory sentence, and, *a fortiori,* if they are *vitandi,* they can neither licitly nor validly perform acts of jurisdiction except in danger of death (can. 2261, 2264); (b) after a declaratory or condemnatory sentence they are deprived of the revenues accruing from their office; (c) a *vitandus* loses not only his income, but also his dignity and office, and the benefice which he holds becomes vacant.

2. *Interdict*

A *general interdict* which affects an entire *parish* as such, or an entire congregation as such, or a particular local interdict, may be inflicted by the bishop, but not by the vicar-general. And such an interdict placed by the bishop upon a parish must be respected also by exempt religious.

If a *cemetery* is interdicted, the adjoining church is not interdicted.

The interdict *ab ingressu ecclesiae* prohibits those thus interdicted to celebrate divine offices in any church, to assist at such offices, and to receive ecclesiastical burial (can. 2277).

3. *Suspension*

Suspension is a censure by which a cleric is forbidden to exercise the rights attached to his office, or benefice, or both. The *effects,* unlike those of excommunication, are *separable,* and hence vary in degree:

a) A *general suspension* deprives a cleric of all the rights pertaining to his office as well as his benefice; and if the suspension is not further determined in the decree or precept of the superior or judge, a general suspension is to be understood.

b) A *special suspension* is twofold: from office or from benefice. The special suspension *from office* may be either total or partial, according as all the rights attached to the office, or some only, are taken away. The special suspension *from benefice,* too, may be total or partial, since the administration of the benefice may be taken away, or only its revenues.

The distinction of *latae* and *ferendae sententiae* also applies to suspension.

If suspension from office is inflicted without any further restriction, it forbids the exercise of any act of the power of order or jurisdiction, and of mere administration attached to the office itself. But the administration of one's benefice is not withdrawn. Besides, it should be noted that the office itself is not lost, for the effect touches only the exercise of rights.

A *modification* of the effects is admitted by the Code under the following conditions:

a) If a suspension forbids the administration of Sacraments and sacramentals, as is the case in suspensions *ab officio* and *a divinis,* the suspended cleric may lawfully administer them only in case he is legitimately requested to do so by the faithful, nor is he obliged to ask for the reason of the demand. This favor, however, supposes that no condemnatory or declaratory sentence has been pronounced against him.

b) When the suspension, *e. g., ab officio, a iurisdictione, a definito et certo ministerio* (*e. g., audiendi confessiones*) forbids an act of jurisdiction either in the internal or external forum, the act performed under such censure is invalid if a condemnatory or declaratory sentence has been pronounced or if the superior has expressly declared that the power of jurisdiction is withdrawn; but if no such sentence or express declaration has been made, the act of jurisdiction is valid, even though illicit. Nay, it even becomes lawful if the minister has been legitimately asked by the faithful. In danger of death the act of jurisdiction which is exercised in giving sacramental absolution is valid and licit, even though other priests or ministers are available.

Procedure for Suspension

Since suspensions are more frequently dealt out than one might wish, it is but proper to state in a few words the mode of *proceeding*.

a) Concerning the suspension *ex informata conscientia* enough has been said above.

b) There is another suspension mentioned in can. *2222*, § 2, which reads: In case of a probable crime, and of a crime against which criminal action cannot be brought on account of prescription, the lawful superior has not only the right, but also the duty, not to promote to either minor or higher orders a cleric of whose unfitness he is certain, and to prohibit such a cleric from exercising the sacred ministry, or even to remove him from office according to the rules laid down in can. 2147–2161. The text adds that *this preventive suspension does not bear the character of a penalty*. Hence the violation of this suspension does not induce the irregularity which otherwise follows every breach of penal law, as per can. 985, n. 7. Nor is a canonical warning required in this case.

c) When a suspension, either as a censure or as a vindictive penalty, is yet to be inflicted, either in law or by the superior (*i. e.*, a suspension *ferendae sententiae*) a canonical warning must precede, otherwise the penalty is null and void and need not be heeded. This warning should be clearly worded as to the time, generally ten (10) days, and the intention of the superior as to what he wants the clergyman to do or to avoid, and administered according to the rules laid down in can. 2143, *viz.*, in the presence of an official of the diocesan court or of two witnesses, or by letter, which must be transmitted

by a trustworthy person or by registered mail with return receipt. Then the expiration of the time granted in the warning must be awaited before further procedure is allowed. A second warning is not required, but may, in charity, be given. Besides, it would be well to observe the *tempus utile,* for there may be circumstances which do not permit clergymen to answer. After the time has elapsed, the suspension may be inflicted, and if so, must be intimated to the culprit. A copy of all the writings and the whole procedure should be kept on file in the chancery office.

d) When a suspension is stated in law, either common or particular, *viz.,* a suspension *latae sententiae,*[1] it is left to the discretion of the superior to declare that suspension has been incurred, *i. e.,* to issue a declaratory sentence. However, this sentence *must* be issued if the interested party insists, or if the public welfare demands it. Thus, for instance, a priest who dares to violate the *privilegium fori* against a fellow-priest (can. 2341) is *ipso facto* suspended, and should be declared as such by the Ordinary to whom the suspension is reserved, because the party as well as the public welfare demand it (see can. 2223, § 4).

e) If the suspension is reserved only in a certain territory, *iure particulari,* the reservation affects only the territory for which it is reserved, and none other. But a suspension reserved by common law, *i. e.,* by the Code, and a suspension inflicted *ab homine,* as, for instance, the suspension *ex informata conscientia,* is reserved everywhere and must be observed everywhere (can. 2247, § 2). On the other hand, a local Ordinary cannot suspend one of his clergymen from an office or a benefice which this

[1] The term *latae* is from *fero, tuli, latum,* to bring or give or issue, but not from *latus, a, um,* wide.

clergyman holds in another diocese, because in this he would be overstepping the limits of his jurisdiction (can. 2282).

f) If a prelate is suspended from the exercise of *pontificals,* he may licitly and validly exercise acts of jurisdiction; but if he is suspended from *office* or *jurisdiction,* he cannot validly perform acts of jurisdiction, provided this sentence has been declared or inflicted, *i. e.,* after a declaratory or condemnatory sentence (can. 2283 and can. 2265).

VINDICTIVE PENALTIES

Vindictive penalties are directly intended for the expiation of crimes, and consequently their relaxation does not depend on the mere cessation of contumacy.

Appeal or *recourse* from vindictive penalties is admitted, and this appeal has a suspensive, not merely a devolutive effect, unless the law contains an express provision to the contrary.

Properly speaking, these penalties, in order to cease, need a *dispensation* which can be granted only by the prelate who inflicted the penalty and, therefore, a penalty inflicted by common law can be remitted only by the Pope, while a penalty inflicted by a particular law or statute can be remitted by the one who enacted that particular law.

PENAL REMEDIES AND PENANCES

There are four kinds of *preventive remedies:* warning, correction, order or precept, and surveillance.

Both *warning* and *rebuke,* if public, must be made either before a notary,—who in this case may be the

chancellor,—or in the presence of two witnesses, who may be discreet laymen, or by letter, which should be registered. They may be made more than once.

A *precept,* order, or injunction is a special command of the bishop, accompanied by threats of punishment in case of disobedience. It may be served after a warning or a rebuke has proved ineffective, or if it is likely that these two measures, warning and rebuke, will not produce the desired effect.

Surveillance or vigilance may be demanded in a very serious case, especially if a person is exposed to the danger of relapse into the same crime.

The *principal,* though not the only, *penances* are:

a) To recite certain prayers, *e. g.,* the Penitential Psalms, or the Stations of the Cross, or the Rosary;

b) To make a pilgrimage to a certain shrine, provided the penitent has the means and is physically able to do so; or to perform some other devotional work, such as taking care of the church or of an altar;

c) To observe special fasts, if one's work or family permits;

d) To give alms for charitable purposes;

e) To retire for some days into a religious house.

SECTION II

PENALTIES FOR INDIVIDUAL CASES

(Cans. 2314–2414)

These penalties (for the most part censures) are here briefly set forth according to the gradation of reservation. To them will be added other penalties which the Ordi-

naries may or should inflict or threaten, as well as the faculties granted by the Holy See.

I. *Excommunications Reserved to the Holy See Modo Specialissimo*

1. Whoever throws away the *Sacred Species,* or carries them off, or retains them for an evil purpose (can. 2320).

2. Those who lay violent hands on the *person of the Roman Pontiff* (can. 2343, § 1, n. 1).

3. Any confessor who absolves, or feigns to absolve, an *accomplice in peccato turpi,* even if the accomplice does not confess the sin of complicity from which he was not yet absolved, but conceals that sin, because he was induced by the confessor not to confess it, either directly or indirectly (can. 2367).

4. Confessors who dare (*praesumpserint*) to break the *seal of confession* directly (can. 2369).

In order to absolve validly and licitly from these four censures a *most especial faculty* of the Holy See is required. Neither the Apostolic Delegates, nor the Ordinaries, according to Formulary III, issued March 17, 1922, possess this faculty.

II. *Excommunications Reserved to the Holy See Modo Speciali*

1. All *apostates* from the Christian faith and all *heretics* and *schismatics*:

Incur excommunication *ipso facto,* and

Unless they repent, *must be deprived* of any benefice, dignity, pension or other charge which they may hold in the Church, and be declared *infamous;* clerics, after repeated warning, must be deposed.

If apostates, heretics or schismatics have joined a non-Catholic sect, or publicly professed themselves members thereof, they are by this very fact (*ipso facto*) infamous; clerics, after having been warned without result, must be degraded and their offices thereby become vacant.

Absolution from excommunication, mentioned in § 1, is *reserved to the Apostolic See speciali modo,* as far as it is to be imparted in the *court of conscience* only. Concerning this absolution, the rules laid down in can. 2248–2254 must be consulted; in cases of reasonable doubt, can. 209. Ordinaries need a special faculty to absolve from this censure.

Absolution in the *external forum* may be imparted by the *local Ordinary* (but not by the vicar-general without special commission) *in the following circumstances:* (a) If the crime of apostasy, heresy, or schism has been in any way brought before the external court of the local Ordinary; (b) If the delinquent is repentant, and (c) If he abjures his error in juridical form and complies with all other prescribed conditions.

Juridically the crime is before the external court of the local Ordinary if a summons has been duly issued. However, since the Codè adds: *"quoquo modo ad forum deductum,"* we may adopt the opinion of St. Alphonsus that it would be sufficient if the crime had been proved to the ecclesiastical judge by at least one witness. This is all the more acceptable since our text admits *voluntary confession.*

Formulary III grants Ordinaries the faculty to absolve all penitents who have incurred the aforesaid penalty on account of *heresy*—apostasy and schism are not mentioned —no matter whether they uttered the heresy in the presence of others or not; but they must denounce the professional teachers of heresy before absolution, if possible, or at least seriously promise to do so afterwards; they

must also, under the same condition, denounce the accomplices of these teachers if they are religious or ecclesiastics. Abjuration is made secretly before the confessor. From this benefit or faculty are excluded those who purposely disseminate heresy among Catholics. A wholesome penance should be imposed on those absolved by virtue of this faculty, and the scandal repaired as much as possible.

2. Those who have published *books written by apostates, heretics, or schismatics,* or defended such books or others nominally forbidden by Apostolic letter, or who knowingly read or retain them without due permission (can. 2318).

The above-named *Formulary* grants the faculty to absolve from this excommunication. We remind the Ordinaries that these faculties *are to be obtained;* they are not *ipso facto* granted by reason of having received the Formulary.

3. Persons not in sacerdotal orders, who pretend to say Mass or to hear sacramental confession (can. 2322).

4. Individuals, of whatever state, rank, or condition, who appeal from laws, decrees, or ordinances of a governing Pope to a future council (can. 2332).

5. Those who have recourse to the civil power in order to impede letters and documents coming from the Apostolic See or from its legates, their promulgation or execution (can. 2333).

6. Those who issue laws, ordinances or decrees against the liberty and rights of the Church; also those who, in order to impede the exercise of ecclesiastical jurisdiction in the external as well as internal forum, either directly or indirectly have rcourse to any secular power (can. 2334).

Ordinaries, by virtue of Formulary III, may absolve from this censure, as far as the second clause is concerned (*impedientes iurisdictionem ecclesiasticam*).

7. Persons who compel to appear before the civil court —against the *privilegium fori*—Cardinals, legates of the Apostolic See, higher officials of the Roman Court, or their own Ordinary (can. 2341).

This includes such as compel the aforesaid persons to appear as witnesses. However, it is at least doubtful whether this penalty binds in countries where the *privilegium fori* does not, *de facto,* exist.

8. Those who lay violent hands on Cardinals, legates, patriarchs, archbishops, or bishops, even though only titular (can. 2343).

9. Usurpers or retainers of property or rights of the Roman Church (can. 2345).

10. Those who forge or falsify decrees or rescripts of the Apostolic See, and those who knowingly make use of such falsified documents (can. 2360).

11. Those who either themselves or through others falsely accuse a confessor of the *crime of solicitation to* his superior (can. 2363).

III. *Excommunications Reserved to the Holy See Simpliciter*

1. Those who derive profit from indulgences (can. 2327).

2. Those who enlist in Masonic sects or other associations of the same kind which plot against the Church or lawful civil authority (can. 2335).

Formulary III contains the faculty to absolve such persons, *provided* they sever their connections with these societies, denounce ecclesiastics or religious who belong to them, and return books, manuscripts and emblems, or at least seriously promise to do so.

3. Those who, without the necessary faculty, dare to

absolve any one from excommunication *latae sententiae,* either most especially or especially reserved to the Apostolic See (can. 2338).

4. Those who aid or favor an *excommunicatus vitandus* in the crime for which he was excommunicated (can. 2338, § 2).

5. Those who dare to hale before a lay judge any bishop (not their own Ordinary), or an abbot *nullius* or prelate *nullius,* or one of the major superiors of religious institutes (can. 2341).

6. Those who violate the enclosure of regulars, and nuns with papal enclosure who leave their enclosure (can. 2342).

Faculty 6 *of Formulary III of the S. Poeniteniaria* gives power to absolve those who have, without proper permission, entered the *enclosure of regulars* of either sex, and to absolve those who have unlawfully admitted or introduced persons forbidden to enter said enclosure. But the absolution is valid only in case the violation of the enclosure, though committed without evil intent, has not yet been brought before the external forum—*viz.,* before a summons has been issued. The confessor must impose a penance proportionate to the gravity of the guilt.

7. Those who, either personally or through others, dare to appropriate to their own use and usurp ecclesiastical property of whatever kind, and those who dare to prevent either individual or corporate ecclesiastical persons from receiving the fruits or income due to them (can. 2346).

8. Those who participate in or challenge others to a *duel,* or accept the challenge, or assist at, or purposely witness a duel (can. 2351).

Formulary III grants the faculty to absolve from this censure, *provided* the case has not yet been brought before the ecclesiastical court—*ad forum externum nondum de-*

ductum. This means that the duelists have not yet been denounced to the Ordinary, and that the latter has not yet issued a summons to the parties in question to appear before his tribunal. After the summons has been intimated, the case is certainly *ad forum externum deductus.*

9. Clerics in higher orders, and regulars or nuns with solemn vows, who presume to contract marriage, even though it be only a civil one, and all those who contract such a marriage with one of the aforesaid persons (can. 2388).

10. Those who commit simony in any ecclesiastical office, benefice or dignity (can. 2392).

11. The vicar-capitular (administrator) and members of the chapter (our diocesan consultors), as well as outsiders who either personally or through intermediary persons withdraw, destroy, conceal, or substantially alter any document belonging to the episcopal court (can. 2405).

IV. *Excommunications Reserved to the Ordinary*

The Ordinary is entitled to communicate this power, which is an ordinary one, to others, either whole, or in part, either for all time or for a certain length of time, and, therefore, may lawfully and validly insert it in the "diocesan faculties." This is plainly stated in can. 199, § 1. *Should* he do it? We answer that he may take a directive norm from can. 897, which tells him that reservation is intended to uproot some inveterate crime and to restore discipline. If this is not the case, the Ordinary had better make it as lenient as possible.

1. Those who contract marriage before a non-Catholic minister as such, *i. e., qua sacris addictus* (can. 2319, § 1, n. 1).

2. Those who contract marriage with the implied or ex-

press agreement that all or some of the children shall be educated outside the Catholic Church (can. 2319, § 1, n. 2).

3. Those who knowingly dare to offer their children to non-Catholic ministers for baptism (can. 2319, § 1, n. 3).

4. Parents, or those holding their place, who knowingly offer their children to be educated or brought up in a non-Catholic denomination (*ib.*, n. 4).

5. Those who manufacture *false relics* or knowingly sell or distribute them or have them exposed to public veneration by the faithful (can. 2326).[1]

6. Those who lay violent hands on the person of clerics or religious of either sex (including novices and members of religious associations).

7. Those who procure abortion, the mother not excepted (can. 2350).

8. Apostate religious of non-exempt and lay institutes (can. 2385).[2]

9. All religious with simple vows who presume to contract marriage, and those who contract marriage with such a religious (can. 2388).

V. *Excommunication Reserved to No One* (*Nemini*)

1. Authors and publishers who print books of Sacred Scripture, or annotations and commentaries thereon, without due permission (can. 2318).

2. Those who command or compel others to give a Christian burial to infidels, apostates from the faith, heretics, or other excommunicated or interdicted persons (can. 2339).

[1] Also *exempt religious* are subject to this censure; see can. 1283.

[2] Apostates of exempt institutes are subject to their own Ordinary (*can. cit.*).

3. Those who knowingly neglect to obtain the papal indult required for the alienation of ecclesiastical property to the amount of more than 30,000 francs, also those who receive anything through such an unlawful deal, as well as those who give their consent (can. 2347).

4. All those who, no matter what their dignity, in any way compel a man to embrace the clerical state, and those who in any way compel a man or woman to enter the religious state or to make religious profession, be it solemn or simple, perpetual or temporary (can. 2352).

5. Those who knowingly omit to denounce, within a month, a confessor who solicited them *ad turpia* in the confessional,—from which censure the neglectful penitent cannot be absolved unless he or she has complied with or seriously promised to satisfy this obligation (can. 2368).

VI. *Interdicts*

1. Corporations such as universities, colleges, chapters and other juridical persons who appeal from laws, decrees or ordinances of the ruling Pope to a general council (can. 2332) incur excommunication reserved *modo speciali* to the Holy See.

2. Those who knowingly celebrate or have others celebrate divine offices in interdicted places, and those who knowingly admit to the celebration of divine offices clerics who have sustained a declaratory or condemnatory sentence of excommunication, interdict or suspension, incur the interdict *ab ingressu ecclesiae*,—reserved to the one whose sentence they have disregarded (can. 2338, § 3).

3. Those who are the cause of a local interdict, or of an interdict laid upon a community or corporation, are *ipso facto* personally interdicted (can. 2338, § 4).

4. Those who, of their own accord, grant Christian

burial to such as are not entitled to it, incur the interdict *ab ingressu ecclesiae*, reserved to the Ordinary (can. 2339).

VII. *Suspensions*

1. The following incur *suspension reserved to the Apostolic See:*

a) A bishop who consecrates another, and the assistant bishops or the priests taking their place, as well as the one who receives episcopal consecration without an Apostolic mandate (can. 2370).

b) Clerics (also bishops) who have knowingly ordained any one, as well as those who have been ordained through simony, and those who administer or receive other Sacraments simoniacally (can. 2371).

c) Suspension *a divinis* is incurred by those who dare to receive Orders from an excommunicated, suspended, or interdicted minister, provided he had been declared to be such or condemned to one of the aforesaid penalties; or from a notorious apostate, heretic, or schismatic (can. 2372).

d) Religious in higher orders, whose profession has been declared null and void on account of deceit admitted by them, remain *ipso facto* suspended until the Apostolic See shall have made provision for them (can. 2387).

2. *Suspensions reserved to the Ordinary* are:

a) If a clergyman brings another clergyman of inferior rank before the civil court, without due permission, he is suspended *from office*. In case of exempt religious the Ordinary is their superior (can. 2341).

b) A religious in higher orders, who is a fugitive, incurs suspension, which must be understood as total, reserved to his superior (can. 2386).

3. *Suspensions reserved to no one:*

a) Priests who dare to absolve from *reserved sins* are *ipso facto* suspended from hearing confessions (can. 2366), if neither by law (can. 900) nor by virtue of faculties absolution is rashly imparted.

b) *Ipso facto* suspended from the exercise of an order illegally received are those who maliciously present themselves for ordination without any, or with false, dimissorial letters, or without having reached the canonical age, or who, without observing the prescribed order, permit themselves to be ordained *per saltum* (can. 2374).

c) A cleric who dares to resign an ecclesiastical office, benefice, or dignity into the hands of laymen, *ipso facto* incurs suspension *a divinis* (can. 2400).

d) Abbots *nullius* or prelates *nullius* who, being obliged to receive the abbatial blessing, neglect to receive it, are *ipso facto* suspended from jurisdiction (can. 2403).

e) Vicars-capitular (our administrators) who grant dimissorials against the ruling of the law (can. 958, § 1, n. 3) *ipso facto* incur suspension *a divinis* (can. 2409).

f) Religious superiors who, against the ruling of the law (can. 965–967), dare to send their ordinands to another bishop, are *ipso facto* suspended from saying mass for one month (can. 2410).

VIII. *Degradation,*

which, however, is only *ferendae sententiae* and, therefore, requires a canonical warning in each and every case, may be pronounced:

1. Against clerics who have joined a non-Catholic sect or publicly professed themselves to be members thereof (can. 2314).

2. Against clerics who lay violent hands on the person of the Roman Pontiff (can. 2343).

3. Against clerics guilty of homicide (can. 2354).

4. Against clerics guilty of very serious solicitation (can. 2368).

5. Against clerics in higher orders who, after having attempted marriage, do not repent (can. 2388).

IX. *Deposition,*

of which the same may be said as of the preceding penalty, may be inflicted:

1. On clerics who apostatize from the Christian faith or become heretics or schismatics (can. 2314).

2. On clerics who desecrate consecrated species (can. 2320).

3. On clerics who say Mass though they are not priests (can. 2322).

4. On clerics who desecrate corpses and graves (can. 2328).

5. On clerics who procure abortion (can. 2350).

6. On clerics who commit one of the various crimes mentioned in can. 2354, provided they have been found guilty in the civil court (can. 2354).

7. On clerics who are found guilty of very serious transgressions *contra sextum,* as mentioned in can. 2359.

8. On clerics in higher orders who refuse to wear the clerical dress and take up a mode of life incompatible with the clerical state (can. 2379).

9. On clerics who illegally take possession of an office, benefice, or dignity, as stated in can. 2394.

10. On clerics who retain an office, benefice or dignity of which they have been lawfully deprived, or from which they have been lawfully removed, or who oppose such privation or removal (can. 2401).

X. *Infamia Iuris*

1. *Ipso facto* infamous are:

a) Those mentiond above (IX, 2);

b) Those mentioned above (IX, 4);

c) Those who presume to lay violent hands on the person of the Roman Pontiff or of Cardinals or legates of the Roman Pontiff (can. 2343);

d) Duelers and their seconds or *patrini* (can. 2351);

e) Bigamists in the true sense of the word (can. 2356);

f) Laymen condemned by the civil court for certain crimes *contra sextum* with minors, rape, sodomy, incest, panderage (can. 2357).

2. *To be declared infamous* are:

a) Apostates, heretics, schismatics (can. 2314);

b) Clerics guilty of crimes mentioned under f), n. 1 (can. 2359).

XI. *Privation of Office or Benefice*

is either *ipso facto* incurred, or may be inflicted in certain cases.

1. It is *ipso facto* incurred:

a) by an *excommunicatus vitandus* (can. 2266);

b) By those who have taken possession of another office or benefice incompatible with one already possessed; this illegal retaining of two incompatible benefices entails the loss of both (can. 2396);

c) By Cardinals who refuse to take the oath required of them (can. 2397);

d) By bishops who neglect to receive the episcopal consecration within six months after their appointment has been intimated to them (can. 2398).

2. It *must be inflicted*:

a) On concubinares, according to can. 2177 ff.;

b) On clerics who become apostates, heretics, or schismatics (can. 2314);

c) On conspirators against the authority of the Roman Pontiff, or his legate, or their own Ordinary, or against the lawful commands of these authorities (can, 2331, § 2);

d) On clerics who remain for six months under the censure of suspension, if they do not give up their contumacy within a month from the date of the canonical warning (can. 2342, § 2);

e) On clerics who lay violent hands on the person of Cardinals or legates of the Roman Pontiff (can. 2343, § 2);

f) On clerics usurping property of the Roman Church (can. 2345);

g) On clerics unjustly usurping other church property (can. 2346);

h) On clerics laying hands on themselves (can. 2350, § 2);

i) On clerics committing certain crimes mentioned in can. 2354;

k) On clerics guilty of gross transgressions *contra sextum* (can. 2359).

3. It *may be inflicted:*

a) On clerics who traffic with Mass stipends or commit fraud by retaining parts of stipends or neglecting to say as many Masses as they have received stipends (can. 2324);

b) On clerics who join forbidden sects (can. 2335 f.);

c) On clerics infringing the liberties or rights of the Church or impeding the exercise of ecclesiastical jurisdiction (can. 2334, 2336);

d) On clerics who are guilty of verbal injuries or

defamation inflicted on other clerics or on laymen, provided a very serious scandal was given or great damage done (can. 2355);

e) On clerics guilty of the crimes mentioned in can. 2359;

f) On clerics forging or falsifying documents of the Apostolic See or using such forged or falsified documents (can. 2360);

g) On clerics who take illegal possession of an ecclesiastical office, benefice, or dignity (can. 2394);

h) On clerics who refuse to make the profession of faith, if such is, according to can. 1406, prescribed for them (can. 2403);

i) On clerics who withdraw, destroy, conceal, or substantially alter any document belonging to the episcopal court (can. 2405).

j) *Religious superioresses, even of exempt institutes,* must be punished (if necessary by privation of office) if they dare to expend dowries against the law (can. 549, can. 2412), or if they neglect to notify the local Ordinary of the admission of members to novitiate or profession (can. 552, can. 2412), or if they interfere with the canonical visitation (can. 2413), or act contumaciously against the freedom granted by law to religious with regard to going to confession (canons 521, 522, 523). If, in this last named case, privation of office has been declared against a superioress, the S. C. of Religious must be immediately informed.

XII. *Privation of the Active and Passive Voice*

1. *Ipso iure* are deprived of this right:

a) All *exclaustrati, viz.,* those secularized for a certain time only; can. 639;

b) All secularized religious (can. 640);

c) All apostates from religious institutes; can. 2385.

2. *To be deprived* are the following:

a) Conspirators and disobedient religious according to can. 2331, § 2;

b) Religious guilty of impeding ecclesiastical liberty and those who are enrolled in condemned societies, as per can. 2336;

c) Religious who violate the law of enclosure, can. 2342;

d) Religious who forge papal documents, according to can. 2360;

e) Those guilty of solicitation; can. 2368, § 1;

f) Religious who contumaciously refuse to observe the common life; can. 2389.

XIII. *Arbitrary Penalties*

must be inflicted on the following:

1. Usurpers of priestly functions; can. 2322;

2. Blasphemers and perjurers; can. 2323;

3. Superstitious and sacrilegious violators of graves; can. 2325, 2329;

4. Those who are disobedient to papal and episcopal commands; can. 2331, § 1;

5. Pastors and priests who excite the people unlawfully; can. 2337;

6. Those who refuse to execute legacies and last wills; can. 2348, and those who refuse to pay their dues; can. 2349;

7. Those who commit rape; can. 2353;

8. Forgers of ecclesiastical papers; can. 2362;

9. Those who rashly violate the seal of confession; can. 2369, § 2;

10. Those who present themselves for ordination without testimonials; can. 2374;

11. Priests who refuse to undergo the required examinations or to attend the prescribed pastoral conferences; can. 2376, 2377;

12. Clerics who engage in illicit traffic or trade; can. 2380;

13. Pastors who neglect their parish-books; can. 2383;

14. Those who obstruct the freedom of ecclesiastical elections; can. 2390, § 1; and those who do not observe the prescribed form of election; can. 2391, § 2;

15. Those who accept an ecclesiastical office not yet vacant; can. 2395;

16. Those who abuse ecclesiastical power; can. 2404.

In inflicting these penalties Ordinaries will do well to consider can. 2223, which says that preceptive penalties cannot be entirely remitted, but that circumstances of time and persons should be taken into consideration.

FACULTIES GRANTED BY THE APOSTOLIC SEE

APPENDIX

What is said in the body of this work on faculties in general and in particular will be amply sufficient for understanding and exercising the same. The following brief rehearsal was made as an aid to the memory.

I. NATURE AND EXTENT

Faculties partake of the nature of a privilege beyond the law (*praeter ius*). They should, therefore, be rather amplified than restricted, unless a contrary clause provides otherwise. Consequently:

a) Faculties may be exercised by the Ordinary as far as his jurisdiction extends (*intra fines iurisdictionis*). But this must be understood of voluntary or non-judiciary jurisdiction, for instance, dispensation from fasting.[1] Whenever a dispute or contentious matter is concerned, a faculty cannot be applied outside one's territory, even though it might otherwise be applied to one's own subject living in another diocese. The faculties for absolving may be everywhere exercised over one's own subjects.[2] Those of dispensing from the impediments of mixed religion and disparity of worship may be exercised in behalf of subjects living outside one's own territory. However, it may not be useless to add that Ordinaries

[1] See can. 201, § 3; cfr. our *Commentary,* Vol. II, 180.

[2] See can. 201, §§ 2, 3; can. 881, § 2; can. 1637.

should be careful in applying such faculties to their subjects living outside their own (the Ordinary's) diocese, because circumstances may have changed in the meantime or may entirely differ from those prevailing in the other diocese. For the rest, most of the faculties granted by virtue of Formulary III are such as call for no application outside one's own diocese, especially since the other Ordinary most probably also enjoys the same faculties.

b) Those who possess the faculties may apply them to *themselves,* provided such faculties do not exceed voluntary jurisdiction.[3] Thus a bishop may make use of the faculties granted by the S. Poenitentiaria in his own favor by granting the faculty to his confessor, or he may confirm himself as confessor of Sisters for a fourth and fifth term (IV, 6).

c) Whenever there is a *doubt as to the sufficiency of the cause,* the faculties may be licitly and validly exercised, and the petitioner may also lawfully ask for the application when he is in the same condition of doubt.[4]

d) Faculties may be granted for the *forum internum* as well as *externum,* and if granted or applied in the external forum, the act is also valid for the internal forum, for instance, a dispensation from a marriage impediment; and unless the nature of the case forbids, or the contrary is expressly stated, a faculty is intended for both. The faculty granted for the internal is not valid for the external forum, but may be applied outside the confessional.[5]

e) Finally faculties may be *bulked,* or to use a more scientific term, they are cumulative. This privilege is

[3] Can. 201, §§ 2, 3.
[4] Can. 84, § 2.
[5] Can. 202.

especially valuable with regard to matrimonial dispensations. But these must be applied according to the rules laid down in can. 1049–1051 (above, pp. 276 ff.).

II. RECIPIENTS

First and above all it should be duly noted that the fact of having received Formulary III does not convey the actual grant of these faculties. Hence the wording at the beginning of the Formulary: *"Possunt a respectivis SS. Congregationibus facultates quae sequuntur impetrare; salvis clausulis in rescriptis quoad usum facultatum adpositis."* Hence application must be made to the Congregations which issue the different faculties. This is done in order to safeguard the juridical and financial competency of the respective Congregations.

1. The *local Ordinary* should petition for the necessary faculties, and they are addressed to him, for instance, *S. C., vigore facultatum a SSmo. D. N. Pio Papa XI sibi tributarum, Ordinario N. in America,* etc.

2. By virtue of can. 66, § 2 these faculties *do not expire with the authority of the Ordinary* (or of any other person who goes by that name, according to can. 198, § 1), to whom they have been granted, but pass to those who succeed him in office; faculties granted to the bishop are intended also for the *vicar-general.* The latter, therefore, enjoys the same faculties with the same rights and consequences as the bishop himself, and he does not require a special subdelegation or communication, except that he must know the text of the faculties, which, therefore, should be communicated to him by the bishop. Exceptions to this general rule must be made with regard to faculties the execution of which requires episcopal consecration, for instance, S. Rit. C., V, 9. Abbots do not

receive these faculties because they are not "local" Ordinaries.

3. These faculties may also be *subdelegated,* according to the rules laid down in can. 199. This subdelegation may be made habitually, or for certain determined cases. Only when subdelegation is strictly forbidden, or the faculty is granted for purely personal reasons, is subdelegation excluded. Thus S. Rit. C., V, M (blessing of devotional articles) is granted to the bishop or Ordinary only, and can, therefore, not be subdelegated.[6]

III. EXECUTION

1. The local Ordinary must take mention of the delegation received when he executes dispensations, according to can. 1057. However, the violation of this rule does not invalidate the dispensation.[7] The law does not provide that the subdelegation must be mentioned, and there is no set formula for mentioning the delegation, hence any form is admissible. Above we have quoted the formula used by the SS. Congregations, *viz.: "vigore facultatum a S. C. de disciplina Sacramentorum nobis tributarum."*

2. The *time from when* the faculties commence to take effect (*tempus a quo currunt*) would, at first blush, seem to be the day on which they are signed by the Prefect of the S. Congregation (can. 38). However, it appears more probable or rather certain, to say that it is the day when they are received by the Ordinary.[8] Consequently,

[6] In the *Forma maior* of the faculties granted by the S. C. of the Propaganda the faculties which may be subdelegated are marked with an asterisk.

[7] S. O., June 15, 1875 (*Coll. P. F.,* 1907, n. 1444); see our *Commentary,* Vol. V, 134.

[8] S. C. P. F., April 2, 1644; Jan. 22, 1759 (*Coll. P. F.,* nn. 100, 412).

if the faculties of Formulary III were received on March 26, 1924, these faculties, being as a rule quinquennial, last until March 26, 1929. It is not necessary, we believe, to demand mathematical accuracy, as described in can. 34, if only the day corresponds with the *terminus a quo*. Thus, in the example stated above, from March 26, 1924, to March 26, 1929. Any other assumption would place the Ordinaries into the unpleasant condition of doubt and anxiety; they would have to remember or record the precise minute when they received the faculties. We also refer the Ordinaries to can. 207 § 2, and can. 209, the former of which states that a faculty (*actus*) of the internal forum exercised by inadvertence after it has lapsed, is valid, while the latter says: *"supplet ecclesia"* in cases of common error or a positive or probable doubt. This *"supplet"* holds for both fora.

The duration or *length of time* for which the faculties are granted is five years (*facultates quinquennales*). For the first time these faculties may be asked for outside the time otherwise fixed for making this petition. But in this case they last only until the time for sending in the diocesan report has been completed. As a rule, these faculties must be petitioned for at the time when the diocesan report is to be submitted, according to can. 340. This time for our American bishops is the year 1924, and every five years thereafter. The time for sending the report is one full year, *viz.*, from the first of Jan. 1924 to the last day of the same year. From this we may again conclude that the duration of the quinquennial faculties need not be calculated with mathematical accuracy.

3. Concerning the *taxes* to be paid to the SS. Congregations, these are mentioned in the grant by each Con-

gregation. The Holy Office reckons with dollars, the other Congregations either prescribe no fixed sum, or set down the amount expected in Italian *lire*. Whenever a tax is demanded the S. Congregation requires that the total amount received for granting the favor by the Ordinary should be forwarded to the respective Congregation at the end of each *year*, not every five years. Take, for instance, the taxes established by the Holy Office:

"Taxa exquiri solita pro qualibet dispensatione—quam R.P.D. Ordinarius exiget, nisi pro casuum diversitate sit moderanda aut dispensanda ob paupertatem oratorum aliasve iustas causas—est trium dollar."

"R.D. Ordinarius in fine cuiuslibet anni directe mittet ad hanc Supremam S. Congregationem quas taxas ipse reapse exegerit, detractâ vero quinta parte, quam pro sui suaeque dioecesis necessitatibus retinere poterit."

Hence the Ordinary may retain for himself sixty cents of the fee received for each and every dispensation. But he is not allowed to charge more than $3.00; if he does, he is obliged to restitution, as per can. 1056. For, if he should calculate the expenses for writing and expediting, the clause of said faculty clearly states for what purpose the fifth part (60 cents) is intended, *viz.*, "for his own needs and those of his diocese." On the other hand, the text permits the Ordinary to remit the tax ($3.00), either entirely or partly if circumstances should require or advise such a remission. The reasons for moderating or dispensing from the fixed tax, says the text, may be either "poverty or other just causes." Poverty is a relative term, but we may safely assume that it is to be taken as including everyone who lives by his daily labor or wage, and has no other income. The "other reasons" may be of a personal nature, as for

instance, objections on the part of the non-Catholic party, or a "fixed idea" of the Catholic party that taxes savor of simony.

It is evident that if the Ordinary does not receive anything for the execution of a faculty, he is not obliged to send anything to Rome.

A. *Faculties Granted by the Holy Office*

I. *Dispensandi, iustis gravibusque accedentibus causis, cum subditis etiam extra territorium aut non subditis intra limites proprii territorii, super impedimento* MIXTAE RELIGIONIS, *et, si casus ferat, etiam super impedimento disparitatis cultus, ad cautelam; quatenus ante nuptias pars acatholica ad veram religionem adduci aut catholica ab ipsis nuptiis absterreri nequiverit, dummodo prius regulariter ad praescriptum Cod. I. C., can.* 1061, § 2, *cautum omnino sit conditionibus ab Ecclesia requisitis, et* IPSE R. P. D. ORDINARIUS MORALITER CERTUS SIT EASDEM IMPLETUM IRI, *scilicet: ex parte nupturientis acatholici de amovendo a parte catholica perversionis periculo, et ab utroque contrahente de universe prole utriusque sexus in catholicae religionis sanctitate omnino baptizanda et educanda; declarata insuper parti catholicae obligatione, qua tenetur, prudenter curandi conversionem coniugis ad fidem catholicam.*

Nupturientes autem moneantur se, ante vel post matrimonium coram Ecclesia initum, ministrum quoque acatholicum ad matrimonialem consensum praestandum vel renovandum adire non posse, ad mentem Cod. I. C., can. 1063, § 1, *sub poena excommunicationis latae sententiae Ordinario reservatae a parte catholica incurrendae, iuxta can.* 2319, § 1, *n.* 1, *stricte caeteroquin servatis quae de*

parochi in casu agendi ratione statuta sunt in can. 1063, § 2.

Quodsi partes actu in concubinatu vivant, provideatur opportunis modis ut scandalum, si adsit, removeatur et pars catholica ad gratiam Dei recipiendam rite disponatur, praevia eius absolutione ab excommunicatione contracta, si forte matrimonium attentatum fuerit coram ministro acatholico, eique impositis congruis poenitentiis salutaribus.

II. *Dispensandi iustis gravibusque accedentibus causis cum subditis etiam extra territorium, aut non subditis intra limites proprii territorii super impedimento* DISPARITATIS CULTUS (*excepto tamen casu matrimonii cum parte iudaica aut mahumetana*); *quatenus sine contumelia Creatoris id fieri possit et ante nuptias pars non baptizata ad veram religionem adduci aut catholica ab ipsis nuptiis absterreri nequiverit, dummodo prius regulariter ad praescriptum Cod. I. C., can.* 1061, § 2, *cautum omnino sit conditionibus ab Ecclesia requisitis, et* IPSE R. P. D. ORDINARIUS MORALITER CERTUS SIT EASDEM IMPLETUM IRI, *scilicet: ex parte nupturientis non baptizati de amovendo a parte catholica perversionis periculo et ab utroque contrahente de universa prole utriusque sexus in catholicae religionis sanctitate omnino baptizanda et educanda; declarata insuper parti catholicae obligatione, qua tenetur, prudenter curandi conversionem coniugis ad fidem catholicam.*

Nupturientes autem moneantur se, ante vel post matrimonium coram Ecclesia initum, ministrum quoque falsi cultus ad matrimonialem consensum praestandum adire non posse, ad mentem Cod. I. C., can. 1063, § 1; *stricte caeteroquin servatis quae de parochi agendi ratione in casu statuta sunt in Can.* 1063, § 2. *Quod vero attinet ad legitimationem prolis, prae oculis habeatur can.* 1051.

Quod si partes actu in concubinatu vivant, provideatur opportunis modis ut scandalum, si adsit, removeatur, et pars catholica ad gratiam Dei recipiendam rite disponatur.

In reliquis, quod refertur ad publicationes, interrogationes de consensu et sacros ritus, sive agatur de impedimento mixtae religionis sive disparitatis cultus, serventur praescripta Cod. I. C., can. 1026, 1102, 1109); *et huiusmodi nuptiis celebratis, sive in proprio, sive in alieno territorio, R. P. D. Ordinarius invigilet ut coniuges promissiones factas fideliter impleant.*

III. Sanandi in radice *matrimonia attentata coram officiali civili vel ministro acatholico a suis subditis etiam extra territorium, aut non subditis, intra limites proprii territorii, cum impedimento mixtae religionis aut disparitatis cultus, dummodo consensus in utroque coniuge perseveret, isque legitime renovari non possit, sive quia pars acatholica de invaliditate matrimonii moneri nequeat sine periculo gravis damni aut incommodi a catholico coniuge subeundi; sive quia pars acatholica ad renovandum coram Ecclesia matrimonialem consensum, aut cautiones praestandas, ad praescriptum Cod. I. C., can.* 1061, § 2, *ullo modo induci nequeat; dummodo aliud non obstet canonicum impedimentum dirimens, super quo Ipse dispensandi aut sanandi facultate non polleat.*

Ipse autem R.P.D. Ordinarius serio moneat partem catholicam de gravissimo patrato scelere, salutares ei poenitentias imponat, et si casus ferat, eam ab excommunicatione absolvat iuxta Cod. I. C., can. 2319, § 1, *n.* 1, *simulque declaret ob sanationis gratiam a se acceptantam, matrimonium effectum esse validum, legitimum et indissolubile iure divino et prolem forte susceptam vel suscipiendam legitimam esse; eique insuper gravibus verbis in mentem revocet obligationem, qua semper tenetur, pro viribus tutandi baptismum et educationem universae*

prolis utriusque sexus, tam forte natae quam forsitan nascturae, in catholicae religionis sanctitate et prudenter curandi conversionem coniugis ad fidem catholicam. Cum autem de matrimonii validitate et prolis legitimatione in foro externo constare debeat, R.P.D. Ordinarius mandet ut singulis vicibus documentum sanationis cum attestatione peractae executionis diligenter custodiatur in Curia locali, necnon curet, nisi pro sua prudentia aliter iudicaverit, ut in libro paroeciae, ubi pars catholica baptismum recepit, transcribatur notitia sanationis matrimonii, de quo actum est, cum adnotatione diei et anni.

In singulis autem praefatis sive dispensationibus sive sanationibus concedendis, R.P.D. Ordinarius expressam faciat mentionem Apostolicae delegationis (Cod. I. C., can. 1057); *et quod attinet ad facultatem sanandi in radice, mens est S. Congregationis ut Ipse parochos, singulis vicibus, subdelegare possit.*

Praesentibus valituris usque ad annum proximae relationis dioecesanae quo tempore elapso, referatur sive dispensationum sive sanationum concessarum numerus Supremae S. Congregationi S. Officii. Contrariis quibuscumque non obstantibus.

Sequentes FACULTATES PER SE IPSUM TAMEN EXERCENDAS, SEU NEMINI DELEGANDAS *etiam concessit die quo supra, Ordinario N. S. Officium, scilicet:*

I. Ut concedere valeat, non ultra triennium, licentiam legendi ac retinendi, sub custodia tamen ne ad aliorum manus perveniant, libros quoscumque prohititos et ephemerides, non exceptis operibus haeresim vel schisma ex professo propugnantibus, vel etiam ipsa religionis fundamenta evertere nitentibus, iis christifidelibus sibi subditis, qui eorumdem lectione, sive ad effectum eos impugnandi sive in s. ministerii vel proprii muneris hone-

storumque studiorum subsidium, vere indigeant; exceptis operibus de obscoenis ex professo tractantibus.

II. Ut pariter concedere valeat, sub eadem temporis duratione, adolescentibus utriusque sexus, qui in publicis scholis, studiorum causa, versari debent, licentiam legendi ac retinendi, sub custodia tamen, ut supra, ne ad aliorum manus perveniant, libros prohibitos, quos laicae potestatis imperio, vel ex necessitate studiorum, prae manibus habere coguntur, quamdiu in ea necessitate versantur, exceptis operibus de obscoenis ex professo tractantibus.

Graviter onerata Ordinarii ipsius conscientia super reali harum omnium conditionum concursu.—Praesentibus ad annum proximae Relationis dioecesanae valituris. Contrariis quibuscumque non obstantibus.

I. To dispense, for just and grave reasons, his subjects, though they may live outside his territory or diocese, and also non-subjects living in his diocese, from the impediment of *mixed religion,* and if necessary, to grant provisional dispensation from the impediment of disparity of cult, in case the non-Catholic party cannot, before marriage, be induced to embrace the true religion, or the Catholic party cannot be restrained from the prospective marriage;—provided, as a rule, that can. 1061, § 2 be observed and the conditions accepted and the *Ordinary himself be morally certain that the conditions shall be complied with, viz.:* on the part of the non-Catholic party that she or he remove every danger of perversion from the Catholic party, and that both parties promise to baptize and educate all the children of both sexes in the holy Catholic religion; besides, that the Catholic party be told of the obligation by which he or she is held prudently to procure the conversion of the non-Catholic party to the Catholic faith.

The parties shall, besides, be warned that they are not allowed, either before or after their marriage before the Church, to go to a non-Catholic minister in order to give or renew their matrimonial consent, as per can. 1063, § 1, under penalty of excommunication reserved to the local Ordinary incurred *ipso facto* by the Catholic party; for the rest, strict observance is required on the part of the pastor, how he should act in case can. 1063, § 2 be verified, *viz.,* if he foresees a violation of this clause.

If the parties are living in concubinage, the possible scandal should be removed by suitable means and the Catholic party be prepared for receiving the grace of God by absolution from excommunication, if such was contracted, perhaps by reason of an attempted marriage before a non-Catholic minister; and proportionate wholesome penances should be imposed.

Concerning the impediment of mixed religion, the faculty must be explained according to can. 1061, to which the reader is referred.[9] The first clause with the conditional phrase, *"dummodo prius,"* as far as *"declarata insuper,"* involves an invalidating condition, which means that, if the Ordinary has no moral certainty as to the fulfillment of the two *cautiones,* he cannot validly or licitly grant the dispensation. If the two *cautiones* were duly signed, moral certainty is presumed, for it is the general means of obtaining a valid contract. Moral certainty is more than probability or conjecture, but means that the mind can be satisfied and is ready to assent to a proposition. What may happen afterwards cannot be foreseen. Note that there is no *"dummodo"* (provided) in the second and third paragraph (*"nupturientes"* and *"quodsi partes"*), which omission indicates that they are to be

[9] See our *Commentary,* Vol. V, pp. 147 ff.

taken seriously indeed, but not as invalidating clauses. The *"scandalum removere"* in the third phrase is verified if the parties are separated, when possible, without greater scandal, or if their marriage, now made lawful, is properly announced.

There is in this faculty no clause which forbids bulking. Such a prohibitive clause would be: *"nec aliud obstet canonicum impedimentum."* Therefore the Ordinary may apply this faculty even in case he has to apply one of the faculties granted by the S. C. of the Sacraments.

Finally, attention may be drawn to the words of the first paragraph: *"et, si casus ferat, etiam super impedimento disparitatis cultus,"* which is a provisional accessory to the faculty, in order to render it effective in case the impediment should *de facto* be one of disparity of worship. It is not absolutely necessary to express it in writing, but it should at least be made mentally, *i. e.*, the Ordinary must have the intention to grant the faculty according to the power given by the Holy See.

II. The second faculty granted by the Holy Office is that of dispensing from the impediment of disparity of worship (*disparitas cultus*). The wording of the first paragraph is almost identical with that of the first faculty. There are only two phrases which call for a brief explanation. *"Excepto tamen casu matrimonii cum parte iudaica aut mahumetana"* means that this faculty cannot be validly or licitly applied to a case where a Catholic wishes to marry a Jew or Mohammedan.[10] *"Quatenus sine contumelia Creatoris id fieri potest,"* as far as this can be done without offence to the Creator, has the same

[10] Vicars Apostolic enjoy the faculty also in these two cases; *Facult., Forma maior,* n. 21.

meaning as *"sine contumelia Creatoris"* in the Pauline Privilege: it excludes blasphemy, immoral conduct on the part of the non-baptized, continual dissension.[11] But *"quatenus"* has not the same force as *"dummodo,"* and therefore the clause cannot be looked upon as invalidating. It is merely a warning or an exhortation to the Ordinary to be circumspect and to inquire into the behavior of the non-Catholic party.

The second and third paragraphs are almost the same as the corresponding paragraphs of the first faculty. Only in the second paragraph the addition must not be overlooked as to the legitimation of the offspring, for which can. 1051 should be consulted.[12]

In whatever concerns the publication of the banns, the asking of the consent, the sacred rites with regard to marriages contracted with the impediment of either mixed religion or disparity of worship, the rules laid down in canons 1026, 1102, and 1109 must be observed.[13] After the celebration of such marriages, whether performed in his own or in another diocese, the Ordinary should see to it that the promises are faithfully kept.

The Ordinary here mentioned is the one who has granted the dispensation; if the marriage was performed in another diocese, the Ordinary who granted the dispensation should exercise this vigilance through the Ordinary of that diocese. The immediate watchman will be the pastor—provided he knows of the mixed marriage and can prudently approach the couple.

III. To heal in the root (*sanatio in radice*) such marriages of their subjects, though not at present living in their diocese, and of others who actuallly live in their

[11] See our *Commentary,* Vol. V, 350.

[12] See above, pp. 285 ff.

[13] See our *Commentary,* Vol. V, 305 ff.

diocese, which were contracted before the civil magistrate or a non-Catholic minister, notwithstanding the impediment of mixed religion or disparity of cult: provided the consent continues in both parties, but cannot be lawfully renewed, either because the non-Catholic party cannot be apprized of the invalidity of the marriage without danger of serious damage or inconvenience to the Catholic party, or because the non-Catholic party can not be brought to renew the consent or to make the promises (*cautiones*), according to can. 1061, § 2; provided, also, there be no other diriment impediment, which the Ordinaries have no faculty to dispense from or to heal.

Concerning *sanatio,* see can. 1138, which defines the nature of that process. Here the faculty is granted for the *sanatio* of a marriage which is invalid by reason of the neglect of the prescribed form, and perhaps also invalid by reason of the diriment impediment of *cultus disparitas* (for *mixto religio,* as such, does not render a marriage invalid).

There are two *essential clauses* attached to the use of this faculty. The first is that the matrimonial consent, once given by both parties, perseveres or continues. For *sanatio* implies revalidation and dispensation from renewing the consent which is the "root" to be "healed." From this consent no power can dispense. The reason why dispensation is given lies in the moral or physical impossibility to have the consent renewed properly. A moral reason would be if the Catholic party were exposed to the danger of serious damage or inconvenience, *viz.,* if there would be danger of one party leaving the other, or if quarrels, suspicion, aspersions should arise. Physical impossibility is the flat refusal of one party to renew the consent, which not infrequently happens, be-

cause the civil ceremony appears to them as sufficient, and the renewal as a slap at the civil government. The second essential clause is that no other diriment impediment exist from which the Ordinaries have no faculties to dispense.

The Church does not "heal" any marriage which is invalid by reason of a diriment impediment of the natural or divine law, but only such as are invalid by reason of an ecclesiastical impediment. If an Ordinary had obtained faculties from the S. C. of the Sacraments (see next section, B), and another impediment besides mixed marriage or disparity of cult were in the way of a *sanatio,* he could apply both faculties at once, *i. e.,* bulk them. This is clearly expressed in the second conditional clause, *"super quo,"* etc.

In the following paragraph are contained some sane admonitions. The first says that the Ordinary shall remind the Catholic party of the grievous offence committed,[14] impose a salutary penance, and, if necessary, impart absolution from the censure (can. 2319, §1, n. 1); he shall tell the party that by the *sanatio* the marriage was rendered valid, lawful, and indissoluble by divine law and all the offspring already born, or yet to be born, is legitimated. He shall point out the strict obligation to have all the children of both sexes baptized and educated in the Catholic religion and prudently to procure the conversion of the non-Catholic consort to the Catholic faith. Although this obligation is a grievous one, yet its omission does not invalidate the *sanatio.* The same is true of the next paragraph, *"Cum autem,"* which instructs the Ordinary to command that in each case a copy of the

[14] The terms to be used in applying this admonition are left to the prudent judgment of the Ordinary, who will duly consider the moral and intellectual qualities of the respective parties.

sanatio with the attestation of its execution be deposited in the diocesan archives and to see to it that a dated record of the *sanatio* is inserted in the parochial book of the parish where the Catholic party was baptized.

In the exercise of every dispensation or *sanatio* thus granted, the local Ordinary shall mention the Apostolic delegation (can. 1057). In regard to the *sanatio in radice* it is the mind of the S. Congregation that the Ordinary may *subdelegate only pastors.* This rule implies that while other priests may be subdelegated for other dispensations (either habitually or for certain cases, can. 199, § 2) only pastors may be subdelegated for the *sanatio,*—not habitually, however, but only for each and every case, *hic et nunc.*

The Holy Office also grants two faculties for the *reading of forbidden books,* concerning which enough has been said above, pp. 354 ff. We only add that *no taxes* are charged by the Holy Office for these two dispensations and no taxes are to be charged from those to whom the faculties are granted, except for postage and clerical labor.

B. *Faculties Granted by the S. C. of the Sacraments*

Sacra Congregatio de Disciplina Sacramentorum, vigore facultatum a SSmo D. N. Pio Papa XI sibi tributarum, Ordinario N. in America, infrascriptas facultates, quibus sive per se sive per alias idoneas ecclesiasticas personas ad hoc specialiter deputandas, uti poterit in matrimoniis contrahendis et nulliter contractis cum suis subditis ubique commorantibus et aliis omnibus in proprio territorio actu degentibus, facta in unoquoque casu expressa mentione huius apostolicae delegationis ad norman can. 1057.

1.° *Dispensandi* IUSTA ET RATIONABILI EX CAUSA SUPER

MATRIMONIALIBUS IMPEDIMENTIS MINORIS GRADUS *quae in Can. 1042 recensentur, nec non super impedimentis impedientibus de quibus in Can. 1056, ad effectum tantum matrimonium contrahendi.*

2.° *Dispensandi* EX GRAVI URGENTIQUE CAUSA *quoties periculum sit in mora et matrimonium nequeat differri usque dum dispensatio a Sancta Sede obtineatur super impedimentis maioris gradus infra recensitis.*

a) Consanguinitatis in secundo aut in tertio cum primo mixtis, dummodo nullum exinde scandalum aut admiratio exoriatur;

b) consanguinitatis in secundo lineae collateralis gradu;

c) affinitatis in primo lineae collateralis gradu aequali vel mixto cum secundo;

d) publicae honestatis in primo gradu, dummodo nullum subsit dubium quod coniux esse possit proles ab altero contrahentium genita.

3.° *Dispensandi tempore et in actu Sacrae Pastoralis Visitationis aut Sacrarum Missionum, et non ultra, super omnibus matrimonialibus impedimentis supra memoratis cum iis qui in concubinatu vivere reperiuntur.*

4.° *Sanandi in radice matrimonia nulliter contracta ob aliquod ex impedimentis minoris gradus, si adsit magnum incommodum requirendi renovationem consensus a parte impedimenti inscia, dummodo consensus in utroque coniuge perduret et nullum adsit periculum divortii, certioriata parte impedimenti conscia de effectu sanationis et debita facta adnotatione in libro matrimoniorum.*

In usu faculatum de quibus in praesenti folio prae oculis habeantur quae in can. 1048 et 1054 statuta reperiuntur.

Curet Ordinarius in singulis praefatis concedendis dispensationibus, ut nupturientes qui pares solvendo inveniantur aequam oblationem iuxta vires persolvant in

obsequium Sanctae Sedis. Idem autem Ordinarius in fine cuiuslibet anni referat ad hanc S. Congregationem de numero et specie dispensationum quas vigore praesentis indulti Ipse fuerit elargitus et summan oblationum transmittat, salvo praescripto canonis 1056.

Pro facultate dispensandi super impedimento mixtae religionis et disparitatis cultus sive singillatim sumptis sive cum aliis impedimentis concurrentibus, recurrendum ad Sanctum Officium.

Praesentibus duraturis usque ad annum quo ab Ordinario fieri debet proxima RELATIO DIOECESANA, *quousque nempe occasione praefatae relationis prorogationem harum facultatum petierit et obtinuerit.*

The S. C. of the Sacraments, by virtue of the power given to it by His Holiness Pope Pius X, grants the faculties mentioned below to the Ordinary N., which he may make use of himself or through other ecclesiastical persons to be especially appointed for that purpose, with regard to marriages either to be contracted, or already invalidly contracted, in favor of his own subjects, wherever they be, and also in favor of all such as actually live in his diocese, mention to be made in each and every case of the Apostolic delegation, according to can. 1057.

Here subdelegation is expressly mentioned, but with the addition: *"ad hoc specialiter deputandas,"* which means that these faculties should be subdelegated to other ecclesiastical persons with some circumspection and selection, and not indiscriminately to all the pastors or priests of the diocese. To those properly selected they may be subdelegated habitually (can. 199, § 2).

1. To dispense for a just and reasonable cause from all minor marriage impediments. These, according to can. 1042, are:

a) *Crime* with adultery and promise of marriage;

b) *Consanguinity* in the third degree of the collateral line;

c) *Affinity* in the second degree of the collateral line;

d) *Public honesty* in the second degree;

e) *Spiritual relationship.*

Besides, he may dispense: (a) from the simple vow of virginity; (b) from the simple vow of perfect chastity; (c) from the simple vow not to marry; (d) from the simple vow to receive sacred orders; (e) from the simple vow to embrace the religious state. The added clause *"ad effectum tantum matrimonium contrahendi,"* is essential, but only concerns the vows, not the five minor impediments; otherwise it would have found its place immediately after *"ex causa."*

2. To dispense:

a) from *consanguinity in the second or third degree mixed with the first,* "provided no scandal or surprise be caused thereby." This *"dummodo"* savors of an invalidating clause, but neither content nor the subject as such would really constitute such a clause. If it were invalidating, the faculty would almost be illusory, because surprise is seldom avoidable; and who is to be the judge?

b) From *consanguinity in the second degree of the collateral line.* Here the second degree has no admixture of the first;

c) from *affinity in the first degree of the collateral line,* either equal to, or mixed with, the second degree;

d) from *public honesty* in the first degree, provided there be no doubt that one party is not the offspring of the other; this is an essential condition.

At the beginning of this paragraph 2 there is a clause embracing the impediments enumerated; *viz.,* that the dispensation is to be granted "for a grave and urgent reason

whenever there is danger in delay and the prospective marriage cannot be deferred until a dispensation from the Holy See can be obtained." For an explanation of this clause see canons 81 and 84.

3. To dispense persons living in concubinage during, and in the act of a pastoral visit or during a sacred mission, but not otherwise, from all the above-mentioned matrimonial impediments. The "pastoral visit" is the one mentioned in can. 343, but the phrase may, we believe, be extended to other diocesan visits, provided they bear the character of pastoral, and are not merely friendly calls. The missions are those named in can. 1349. The text does not specifically require that the Ordinary give the mission himself, but his presence is demanded by reason of the clause *"in actu."* As to the meaning of concubinage, see can. 1078.

4. To revalidate (*sanandi in radice*) marriages invalidly contracted on account of one of the minor impediments, provided it would be very inconvenient to obtain a renewal of consent from the party who is ignorant of the impediment, and provided also that the former consent continues and there is no danger of a divorce. The party aware of the impediment must be told of the effect of this *sanatio,* and a note added in the marriage register (see can. 1138 ff.).

After the enumeration of faculties the Ordinaries are exhorted to see to it that the parties for whose benefit these dispensations are granted, should be told to make an equitable offering, if they are able to do so, as a token of reverence to the Holy See.[15] The Ordinary shall also report annually to this S. Congregation the number and kind of dispensations which he has granted by virtue

[15] See our *Commentary,* Vol. V, 130 ff.

of these faculties and forward the money received for them, with due regard to can. 1056.

C. *Faculties Granted by the S. Concilii*

1.° *Reducendi per quinquennium, ob diminutionem redituum perpetua missarum onera ad rationem eleemosynae in dioecesi legitime vigentis, quoties nemo sit qui de iure teneatur et utiliter cogi queat ad eleemosynae augmentum, et sub lege ut de missarum ita reductarum satisfactione a singulis celebrantibus Curia dioecesana quovis anno legitime doceatur.*

2.° *Transferendi per quinquennium intra fines dioecesis onera missarum in dies, ecclesias vel altaria alia a fundatione statuta, dummodo adsit vera necessitas nec divinus cultus idcirco minuatur aut populi commoditati praeiudicium inferatur, exceptis tamen legatis quae in certis locis adimpleri facile possunt per eleemosynae augmentum, et cauto ut de translatarum missarum satisfactione quovis anno Curia dioecesana a singulis celebrantibus legitime doceatur.*

3.° *Transferendi per quinquennium exuberantia missarum onera etiam extra dioecesim, cauto tamen ut quam maximus missarum numerus intra fines dioecesis celebretur atque adamussim serventur praescripta Codicis iuris canonici circa cautelas adhibendas in missis committendis.*

4.° *Permittendi ut privata Matutini cum Laudibus recitatio anticipari possit ab hora prima post meridiem, quoties adsit rationabilis causa.*

5.° *Permittendi alienationem bonorum ecclesiasticorum usque ad summam capitalem 10,000 dollariorum pro Statibus Americae Foederatis et ditione Canadensi; et 15,000 pesos pro America Meridionali aliisque regionibus; hoc vero quatenus necessitas adsit et tempus non suppetat*

recurrendi ad S. Sedem, edocta, statim ac effecta fuerit alienatio eadem, S. Sede de alienatione ita peracta.

1. To grant, for a space of five years, a *reduction of perpetual masses,* if the revenues have been diminished and no one can legally and conveniently be compelled to increase the original stipend. The reduction is to be made in proportion to the amount of stipends in vogue in the respective diocese. The priests benefited by the reduction must notify the diocesan chancery annually of the fulfillment of the reduced obligations (see can. 1550).

2. To grant, for a space of five years, a *transfer of masses* which, according to the foundation-charter, should be said on certain days or altars, or in specified churches, within the same diocese, provided there be a real need for such transfer, and provided that divine worship suffer no curtailment and the people experience no inconvenience therefrom. From this grant are excluded foundation-masses which can easily be said by increasing the stipend. The priests thus benefited, etc. (can. 833, 834).

3. To *transfer,* for a space of five years, supranumerary *masses* to another diocese, provided, however, that the greater number be said in the diocese and, for the rest, the prescriptions of the Code be observed. The Code has no prohibitive clause as to sending Masses outside the diocese nor any instructions as to where they must be said; but merely lays down certain precautions (see can. 837–840).

4. To grant permission to begin *"anticipating" Matins and Lauds* at one o'clock P. M. when there is a reasonable cause. This faculty may be inserted in the diocesan faculties.

5. To allow *alienation of church property* to the amount of $10,000 in the U. S. and Canada and 15,000 pesos in South America. The Holy See must, however, be in-

formed of the alienation made, which, besides, is permissible only in case of necessity and when no time is left for recourse (see can. 534 and 1532). In such a case can. 81 may be applied.

D. *Faculties Granted by the S. C. Religiosorum*

1.° *Facultas dispensandi super illegitimitate natalium ad ingrediendum in Religionem, quatenus a Constitutionibus Instituti requiratur, dummodo non agatur de prole sacrilego commercio orta, ad petitionem Superiorum, et dispensati ad munia maiora ne eligantur iuxta praescriptum Can. 504.*

2.° *Facultas permittendi celebrationem trium Missarum de ritu in nocte Nativitatis D.N.I.C. in ecclesiis religiosorum non comprehensis in can. 821, 3, cum facultate pro adstantibus ad S. Synaxim accedendi, ita tamen ut dictae tres Missae ab uno codemque Sacerdote celebrentur.*

3.° *Facultas dispensandi super aetatis excessu pro admittendis ad habitum religiosum, quatenus a Constitutionibus Instituti requiratur, audita in singulis casibus Superiorissa Generali vel Provinciali atque praevio eorum consensu et respectivi Consilii, dummodo postulantes aetatem 40 annorum ne excesserint et polleant ceteris qualitatibus requisitis.*

4.° *Facultas dispensandi super defectu aetatis canonicae ad S. Ordinem Presbyteratus, non ultra . . . menses, etiam pro Religiosis exemptis, dummodo a suis Superioribus litteras dimissoriales acceperint et quatenus ordinandi ceteras qualitates habeant a SS. Canonibus requisitas et praesertim curriculum theologicum expleverint ad norman Canonis 976, § 2 Codicis I. C.*

5.° *Facultas dispensandi super dotis defectu cum*

Monialibus et Sororibus in toto vel in parte, dummodo status occonomicus Instituti detrimentum ne patiatur, et postulantes talibus sint praeditae qualitatibus, ut eas magnae utilitati Instituto fore certa spes habeatur.

6.° *Facultas confirmandi Confessarium ad quartum et quintum triennium, dummodo maioris partis Religiosarum, convocatis etiam iis, quae in aliis negotiis ius non habent ferendi suffragium concensus capitulariter ac per secreta suffragia praestandus, prius accedat, proviso pro dissentientibus, si quae sint ac velint.*

7.° *Facultas permittendi celebrationem SS. Missae Sacrificium Feria V in Coena Domini, facta licentia personis habitualiter in communitate commorantibus sese reficiendi S. Synaxi, etiam ad adimplendum praeceptum paschale.*

8.° *Facultas permittendi Monialibus descensum in Ecclesia ut ipsae eam maiori sollertia mundare et decorare possint, exeuntibus prius ab Ecclesia extraneis omnibus, non exceptis ipsis Confessario et Monasterio inservientibus et extra claustra degentibus, portae illius claudantur et clavos Superiorissae tradantur, Moniales vero semper binae sint et porta per quam aditus interior ad Ecclesiam patet, duplici clavi claudatur, quarum una a Superiorissa, altera a Sanctimoniali ab Ordinario deputanda custodiatur et non aperiatur nisi in casibus enunciatis et cum praescriptis cautelis.*

9.° *Facultas permittendi Monialibus egressum e claustris urgente casu operationis chirurgicae subeundae, quamvis non secumferat periculum mortis imminentis aut gravissimi mali, per tempus stricte necessarium, praescriptis debitis cautelis.*

1. To dispense from illegitmacy, if this condition is inserted as invalidating religious profession in the respective Constitutions; for can. 542 contains nothing to this

effect. Sacrilegious illegitimacy, however, is not thereby dispensed from, nor can an illegitimate person otherwise dispensed in virtue of this faculty, be admitted to higher offices (can. 504).

2. To grant permission for celebrating three Masses on Christmas night, as permitted by the rubrics, in the churches of religious not comprised by can. 821, § 3, provided the same priest says all three Masses (see our *Commentary,* Vol. IV, p. 165 ff.).

3. To grant a dispensation for those who, according to the Constitutions of the respective institutes, could not otherwise be received by reason of advanced age. The Ordinary must, however, previously obtain the consent of the superior, either general or provincial, and of his counsellors. Besides, the postulants should not be older than forty years and possess the other necessary qualities (see can. 542).

4. To dispense from lack of the required age for the priesthood, but only for a certain number of months. This number is not explicitly stated; but since the term "month" is used, it is implied that it should be less than a year. This faculty may also be applied in favor of exempt religious, provided they have obtained dimissorial letters from their superiors. In all cases the studies required by can. 976, § 2 must have been fully completed, unless, of course, the candidate has received a general privilege to the contrary, as the Benedictines have.

5. To dispense nuns and Sisters from the *defect of dowry,* either entirely or in part, provided the institute does not suffer thereby financially and the candidates are commendable for reasons of great usefulness. Concerning the dowry, see can. 547, which permits Ordinaries to dispense from it in diocesan institutes. This faculty,

therefore, concerns only exempt and papal organizations whose Constitutions demand a dowry.

6. To confirm the ordinary *confessor for a fourth and even a fifth term,* provided the majority of the religious by secret ballot vote, in favor of his confirmation in office; to this ballot must be admitted, also those who would otherwise be excluded from voting, and provision must be made for those who object to the confirmation if they demand it (see can. 526).

7. To permit the celebration of Mass on *Holy Thursday,* which permission also allows persons habitually living in the community (see can. 514) to receive their Easter Communion there (see can. 820 and 859).

8. To allow *cloistered nuns* to go to a church adjoining their convent, *outside the enclosure,* for the purpose of cleaning and adorning it. There must, however, be no stranger in the church, not even the confessor, nor any domestic servant; the door must be locked and the keys handed to the superioress; the gate leading to the interior entrance must be locked with two keys, one of which must be kept by the superioress and the other by a nun appointed by the Ordinary; this interior gate may only be opened on the above-named occasions and after taking due precautions, one of which is that two nuns must always go together.

9. To allow a *nun to leave the enclosure* for the purpose of a surgical operation, even if there be no immediate danger of death or of serious consequences; but this permission may be granted only for the time absolutely necessary and with due precautions. The last mentioned two faculties are hardly required in our country, except where there are Visitation nuns with papal enclosure.

E. *Faculties Granted by the S. Congregatio Rituum*

1.° *Deputandi sacerdotes, si fieri potest, in aliqua ecclesiastica dignitate constitutos ad altaria fixa et portatilia consecranda, servato ritu et forma Pontificalis Romani; et quoad altaria portatilia etiam adhibita sola rituali formula breviori approbata.*

2.° *Deputandi sacerdotes, si fieri potest, in aliqua ecclesiastica dignitate constitutos ad altaria fixa et portatilia execrata consecranda, adhibita breviori formula B pro casibus can. 1200, § 2, Cod. I. C.; dum in casu can. 1200, § 1, iam indulta fuit per ipsum canonem facultas et adhibenda est formula A.*

3.° *Deputandi sacerdotes, si fieri potest, in aliqua ecclesiastica dignitate constitutos, ad consecrandos calices et patenas; servato ritu et forma Pontificalis Romani.*

4.° *Quando in Missa Hebdomadae Maioris dicitur passio, pro sacerdotibus qui binas missas, e speciali Indulto Apostolico obtinendo celebrant, legendi in una Missa tantum ex Passione postreman partem* (Altera autem die *etc.*) *praemissis;* Munda cor meum, *etc.;* Sequentia sancti evangelii secundum (Mathaeum).

5.° *Benedicendi nuptias extra Missam vel recitandi preces super coniuges, iuxta formulas approbatas, cum potestate subdelegandi.*

6.° *Benedicendi et imponendi quinque scapularia sub unica formula, cum potestate subdelegandi.*

7.° *Benedicendi et imponendi quinque scapularia sub unica formula absque recursu ad Ordinarios seu Congregationes religiosas competentes, et sine onere inscriptionis in casibus magni concursus, tempore exercitiorum et missionum spiritualium, cum potestata subdelegandi.*

8.° *Benedicendi sacra olea cum minori numero sacro-*

rum ministrorum, Feria V. in Coena Domini (pro Episcopo celebrante).

9.° *Permittendi thurificationem in Missa cantata absque sacris ministris.*

10.° *Permittendi usum Memorialis Rituum Benedicti PP. XIII in Ecclesiis seu Orstoriis publicis et semi-publicis (non parochialibus vel quasi parochialibus) in functionibus Tridui Maioris Hebdomadae et in Benedictione Cinerum, Candelarum et Palmarum.*

11.° *Benedicendi obiecta pietatis, signo crucis, pro Episcopo seu Ordinario, servatis ritibus ab Ecclesia praescriptis. Occasione tamen visitationis pastoralis et quando multi petunt, et plura ac varia exhibent eiusmodi obiecta benedicenda, saepe etiam cum diversis formulis, hisce in casibus permittitur unica et brevis formula ab Episcopo seu Ordinario recitanda, dum facit signum crucis super obiecta nempe:* "Benedicat haec omnia Deus Pater, Filius et Spiritus Sanctus, Amen."

12.° *Celebrandi Missam de Requiem lectam semel in hebdomada ab Episcopo seu Ordinario in proprio oratorio; dummodo non occurrat festum ritus duplicis primae aut secundae classis, Dominica aut festum de praecepto etiam suppressum, necnon Octava privilegiata, Feria Quadragesimae, Quatuor Temporum, Rogationum, Vigilia aut Feria in qua anticipanda vel primo reponenda est Missa Dominicae, servatis de cetero rubricis.*

Taxae exquiri solitae pro hisce indultis—quasque Ordinarius exiget, nisi pro casuum diversitate sint moderandae aut dispensandae ob paupertatem oratorum aliasve iustas causas—sunt quae sequuntur, etc. Quas taxas etc., as above under I.

1. To appoint priests for the purpose of *Consecrating fixed and portable altars.* Fixed altars must be con-

secrated according to the Pontificale, while portable altars may be consecrated according to the shorter formula in the Rituale.[16] The Ordinaries should, if possible, select for this appointment priests who enjoy an ecclesiastical dignity, such as abbots, monsignori, provincials, or, in general, religious superiors with jurisdiction.[17] This latter accidental condition is attached also to faculty

2. *viz.: to reconcile desecrated altars,* either fixed or portable. If the desecration was caused by a considerable fracture, or by the removal of the relics, or by a fracture or removal of the sepulchre, the shorter formula B may be used. If the table or *mensa* was severed from its support, formula A must be employed; though in this latter case no faculty is required, since the Code (can. 1200, § 1) grants the power.

3. To appoint priests, if possible from among the dignitaries mentioned above, for the purpose of *consecrating chalices and patens.* The formula to be used is that of the *Pontificale Romanum.* Note that these three faculties are not intended for the clergy in general and should not, therefore, be inserted in the usual diocesan faculties. The term *"deputandi"* indicates a special grant.

4. To allow those priests who, by virtue of a special Apostolic indult, are entitled to say two Masses, to recite the Passion, when it occurs during Holy Week, in one Mass only. The Mass without the Passion is said thus: After the Tract the *"Munda cor meum,"* etc., then the *"Sequentia sancti evangelii secundum Mathaeum,"* then the *"Altera autem die,"* etc. The faculty speaks of a special indult *to be obtained.* But can. 806, § 2 grants the Ordinaries power to permit bination, hence the special indult must refer to the other three days of Holy Week.

[16] See the Formularies in the Appendix to our *Pastor,* p. 311 ff.
[17] See above, p. 319 f.

5. To *bless marriages outside of Mass,* or to recite the blessing over the parties according to the approved formulas. This as well as nn. 6 and 7 may be sub-delegated.

6. To bless and impose the five *scapulars* under one form.

7. To bless and impose the *five scapulars under one form without recourse to the Ordinary* or to the religious Congregations from which permission should be obtained, and also without the duty of entering the names of those enrolled. But this faculty can only be made use of in case of a large concourse,[18] at retreats, missions, etc.

8. To bless the Holy Oils on Maundy Thursday with a smaller number of assistants than is required by the Pontificale; this faculty is for bishops only.

9. To allow *incensation at High Masses without sacred ministers.* This faculty was already granted to many of our dioceses by a decree of the S. C. Rit., in 1897.

10. To permit the use of the *Memoriale of Benedict XIII* in non-parochial or quasi-parochial churches, or public and semi-public oratories, at Holy Week services and the blessing of ashes, candles, and palms.

11. For the Bishop or Ordinary to *bless devotional articles with the sign of the cross,* but with due observance of the prescribed rites. On the occasion of the pastoral visit, however, and when there is a great demand and many objects are offered for blessing, which would require various formulae, the Bishop or Ordinary may simply make the sign of the cross and say: *"Benedicat haec omnia Deus Pater, Filius et Spiritus Sanctus, Amen."*

We may be permitted to add that the majority of our

[18] A *magnus concursus* may be assumed if from 10 to 15 persons are to be enrolled; thus the term was explained in a letter that accompanied a rescript to the same effect.

priests not unreasonably expected a little more for themselves as regards the blessing of devotional articles.

12. To celebrate a low requiem Mass once a week in his (the Bishop's or Ordinary's) chapel—provided there occur no first or second class feast, no Sunday or holyday (though suppressed) of obligation, no privileged octave, no Feria of Lent, no Ember Day, no Rogation Day, no Vigil or Feria on which the Sunday Mass must be either anticipated or postponed. The only suppressed feast of obligation is St. Sylvester's, Dec. 31; the privileged octaves are Easter and Pentecost (*primi ordinis*), Corpus Christi and Epiphany (*secundi ordinis*), Christmas and Ascension (*tertii ordinis*).

As to taxes, enough was said above, but the S. Congregation uses the Italian *lira* as its standard, and charges Ordinaries to remit the sum required in the same way as the Holy Office and under the same clauses.

F. *Faculties Granted by the S. Poenitentiaria*

1.° *Absolvendi quoscumque poenitentes (exceptis haereticis haeresim inter fideles e proposito disseminantibus a quibusvis censuris et poenis ecclesiasticis ob haereses tam nemine audiente vel advertente quam coram aliis externatas incursis, postquam tamen poenitens magistros ex professo haereticales, si quos noverit, ac personas ecclesiasticas et religiosas, si quas hac in re complices habuerit, prout de iure denunciaverit; et quatenus ob iustas causas huiusmodi denunciato ante absolutionem peragi nequeat, facta ab eo seria promissione denunciationem ipsam peragendi cum primum et quo meliori modo fieri poterit, et postquam in singulis casibus haereses coram absolvente secreto abiuraverit; iniuncta pro modo excessuum gravi poenitentia salutari cum*

frequentia sacramentorum, et obligatione se retractandi apud personas coram quibus haereses manifestavit, atque illata scandala reparandi.

2.° *Absolvendi a censuris et poenis ecclesiasticis eos qui libros apostatarum haereticorum aut schismaticorum, apostasiam, haeresim aut schisma propugnantes, aliosve per Apostolicas Litteras nominatim prohibitos defenderint aut scienter sine debita licentia legerint vel retinuerint; iniuncta congrua poenitentia salutari ac firma obligatione supradictos libros, quantum fieri poterit, ante absolutionem, destruendi vel Ordinario aut confessario tradendi.*

3.° *Absolvendi a censuris eos qui impediverint directe vel indirecte exercitium iurisdictionis ecclesiasticae sive interni sive externi fori, ad hoc recurrentes ad quamlibet laicalem potestatem.*

4.° *Absolvendi a censuris et a poenis ecclesiasticis circa duellum statutis, in casibus dumtaxat ad forum externum non deductis; iniuncta gravi poenitentia salutari, et aliis iniunctis, quae fuerint de iure iniungenda.*

5.° *Absolvendi a censuris et poenis ecclesiasticis eos qui nomen dederint sectae massonicae; aliisque eiusdem generis associationibus, quae contra Ecclesiam vel legitimas civiles potestates machinantur; ita tamen ut a respectiva secta vel associatione omnino se separent eamque abiurent, denuncient, iuxta can. 2336, § 2, personas ecclesiasticas et religiosas, si quas eidem adscriptas noverint; libros, manuscripta ac signa eamdem transmittenda aut saltem, si iustae gravesque causae id postulent, destruenda; iniuncta pro modo culparum gravi poenitentia salutari cum frequentatione sacramentalis confessionis et obligatione illata scandala reparandi.*

6.° *Absolvendi a censuris et poenis ecclesiasticis eos qui clausuram Regularium utriusque sexus sine legitima licentia ingressi fuerint, necnon qui eos introduxerint vel*

admiserint; dummodo tamen id factum non fuerit ad finem utcumque graviter criminosum, etiam effectu non secuto, nec ad externum forum deductum; congrua pro modo culpae poenitentia salutari iniuncta.

7.° Dispensandi ad petendum debitum coniugale cum transgressore voti castitatis perfectae et perpetuae, privatim post completum XVIII aetatis annum emissi, qui matrimonium cum dicto voto contraxerit, huiusmodi poenitentem monendo, ipsum ad idem votum servandun teneri tam extra licitum matrimonii usum quam si coniugi supervixerit.

8.° Dispensandi super occulto criminis impedimento, dummodo sit absque ulla machinatione, et agatur de matrimonio iam contracto; monitis putatis coniugibus de necessaria consensus secreta renovatione, ac iniuncta gravi et diuturna poenitentia salutari.

Item dispensandi super eodem occulto impedimento, dummodo pariter sit absque ulla machinatione, etiam in matrimoniis contrahendis; iniuncta gravi et diuturna poenitentia salutari.

1. To absolve penitents from censures and penalties incurred on account of *heresy,* whether witnessed by by-standers or not. The conditions for licit absolution are: (a) that the penitent denounce the professional teachers of heresy if he knows them, as well as ecclesiastical persons and religious who were accomplices in the crime; (b) that the penitent, in case he can not for a just reason make the required denunciation before receiving absolution, seriously promise to do so as soon as possible and as well as he can; (c) that the penitent, in each individual case, secretly abjure his heresy in the presence of the one who absolves him; (d) that the confessor impose a wholesome and proportionate penance, together with frequent

reception of the Sacraments and the obligation of retracting the heresy uttered and repairing the scandal given to other persons (see can. 2314). This faculty excludes those who purposely propagate heresy among the faithful.

2. To absolve from censures and ecclesiastical penalties those who have defended or knowingly and without the necessary permission read or retained *books* of apostates, heretics, or schismatics which defend apostasy, heresy, or schism, or other books nominally forbidden by Apostolic letter (see can. 2318). The penitent must be given a wholesome penance and is obliged to destroy said books or to deliver them to the Ordinary or confessor, if possible, before he obtains absolution.

3. To absolve from censure those who have either directly or indirectly *impeded the exercise of ecclesiastical jurisdiction* by recourse to the civil power (see can. 2334).

4. To absolve from censures and ecclesiastical penalties enacted against *duelling* in cases which have not yet been brought before the external forum. The penitent must be given a wholesome penance and told to comply with other obligations imposed on him with a view to repair the damage caused. (Can. 2351).

5. To absolve from censures and ecclesiastical penalties *Freemasons* and members of similar associations which plot against Church or State. The conditions required of these penitents are: (a) that they sever their connection with said sect or association and abjure it; (b) that they denounce ecclesiastics or religious who belong to such a sect or association and of whom they know that they are members; (c) that they deliver up books, manuscripts, and emblems, or at least, if just and grave reasons demand it, destroy them (see can. 2335).

The confessor must impose a wholesome penance

proportionate to the guilt, frequent reception of the Sacrament of Penance, and stress the obligation of repairing the scandal given.

6. To absolve from censures and ecclesiastical penalties those who have, without proper permission, entered the *enclosure of regulars* of either sex, and to absolve those who have unlawfully admitted or introduced persons forbidden into said enclosure. The absolution is valid only in case the violation of the enclosure, though committed without evil intent, has not yet been brought before the external forum. The confessor must impose a penance proportionate to the gravity of the guilt. (Can. 2342).

7. To dispense those who, notwithstanding the private vow of perfect and perpetual chastity taken after the completed 18th year of age (see can. 1309), have contracted marriage, for the purpose of demanding the *debitum coniugale*. The penitent must be told that he or she is obliged to observe the vow outside the lawful use of marriage and in case he or she should survive the other party.

8. To dispense from the occult impediment of *crime*, provided there was no *machinatio* (conjugicide) on either side, and provided the marriage had already been contracted. The supposed consorts must be told of the necessity of secretly renewing their consent, and be given a grave and lasting penance. Also to dispense from the impediment of crime under the condition stated when a marriage is to be contracted, with a grave and lasting wholesome penance (see can. 1075 and 1135).

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